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1 J. Seery
2 Q. Okay. And when you read
3 Mr. Waterhouse's -- parts of his transcript,
4 did it include Ms. Deborah Deitsch-Perez's
5 questions?
6 A. There was a section at the end that
7 it was unclear to me who was asking the
8 question, because I think there was also a --
9 another attorney --
10 Q. Okay.
11 A. -- Debra Dandeneau.
12 (Simultaneous speaking.)
13 A. -- so I wasn't sure who was -- who
14 was asking -- I didn't know who represented
15 whom and who was asking the questions.
16 Q. Did you ever discuss with
17 Mr. Waterhouse the substance of what
18 Mr. Dondero told him vis-a-vis not making any
19 more payments?
20 A. I don't believe so, no.
21 Q. Did you ever -- other than legal
22 counsel, did you ever discuss that with
23 anyone at Highland, to your recollection?
24 A. Yes.
25 Q. Okay. With whom?

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2 transition, it was very difficult to agree on
3 any payments because Mr. Dondero had this
4 edict of no payments.
5 And I just don't recall if it was
6 before January 7, at January 7 or immediately
7 thereafter. I just -- it -- I don't recall.
8 It may have even been as far back as
9 December. I don't know the exact answer.
10 Q. Did Highland, prior to the plan
11 becoming effective, have any written policies
12 or procedures in place with respect to how it
13 would operate any aspect of its business
14 practices?
15 A. Certainly.
16 Q. Okay. Do you recall whether any of
17 those policies or -- or procedures related to
18 enforcing debt obligations due and payable to
19 Highland?
20 A. I -- I don't recall seeing anything
21 like that.
22 Q. Do you recall whether you ever
23 tried to consult any policies and procedures
24 before your letter of January the 6th?
25 A. I, I did not nor -- nor would I

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1 J. Seery
2 A. Ms. Hendrix and Mr. Klos.
3 Q. Why Mr. Klos?
4 A. He's my CFO.
5 Q. To your knowledge, did he overhear
6 Mr. Waterhouse or Mr. Dondero say something
7 to that same effect?
8 A. I don't believe he did, no.
9 Q. Is it fair to say that other than
10 Mr. Waterhouse's deposition from a few days
11 ago, the universe of what you heard about
12 what Mr. Dondero instructed came from
13 Ms. Hendrix?
14 A. I don't think that's fair. I might
15 have heard it from Mr. Klos, who heard it
16 from Mr. Hendrix -- from Ms. Hendrix, I'm
17 sorry.
18 Q. Okay.
19 A. So around this time it was clear
20 that the payment wasn't made, the shared
21 services payments had -- had not been made,
22 none of the payments from related entities
23 had been made, and it was clear Mr. Dondero
24 had directed that no payments be made. And
25 even around the negotiations for any kind of

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1 J. Seery
2 have.
3 Q. Because, again, you made the
4 determination that the payment hadn't been
5 made, the note says what it says, and it was
6 the fiduciary obligation that you felt to the
7 estate to call the note?
8 A. That's correct.
9 MR. MORRIS: Objection to the
10 form of the question.
11 Q. Did any part of your motivation
12 involve trying to stick it to Mr. Dondero?
13 A. Not at all.
14 Q. Okay. Did you consider any
15 alternatives to the January 6 letter before
16 you sent it?
17 MR. MORRIS: Objection to the
18 form of the question.
19 Q. And I think -- let's exclude
20 discussions you might have had with counsel.
21 MR. MORRIS: Same objection.
22 A. No, I -- I think I just considered
23 that the note was due and we would accelerate
24 it. It wasn't paid, we'd accelerate it and
25 try to collect the whole.

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1 J. Seery

2 Q. After you sent your letter of

3 January 7, did you issue any instructions to

4 Mr. Waterhouse or anyone else at the debtor

5 with respect to anything having to do with

6 the NexPoint note or missed payment?

7 A. I don't believe so, no.

8 Q. Are you aware that on or about

9 January 12, 2021, Mr. Waterhouse and

10 Mr. Dondero had a telephone conversation, at

11 least one, regarding the missed payment?

12 A. I am aware of that from your --

13 Mr. Waterhouse's deposition. I had no

14 knowledge of that before the --

15 Q. Mr. Waterhouse never talked to you

16 about that prior to you seeing it in his

17 deposition?

18 A. No.

19 Q. Okay. You're aware that on or

20 about January the 14th, 2021, NexPoint did

21 make a \$1.4 million and change payment?

22 A. Yes, I am.

23 MR. RUKAVINA: Okay.

24 (Brief off-record discussion.)

25 MR. RUKAVINA: Sir, this is going

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2 my edict caused the acceleration of note. I

3 don't know if he paid attention to the prior

4 demand -- acceleration and demand note.

5 So a payment was received on the

6 14th for \$1.4 million. And under the terms

7 of the note, my understanding of the law, we

8 applied the payment to the balance and

9 reiterated our demand.

10 Q. When you were just now putting

11 words in Mr. Dondero's mouth, were you

12 speculating as to his mental process or did

13 he say anything like that to you?

14 A. He wasn't allowed to talk to me and

15 I didn't -- so I was speculating, but part of

16 it is that -- I believe the colloquy you had

17 yesterday with Frank had -- or two days ago,

18 had a reference to Mr. Dondero being in

19 court. I don't remember if that was on an

20 email or if it was in the -- the colloquy

21 that you had.

22 Q. But at least as of January the

23 15th, 2021, your then mental impression was

24 that it was an event that occurred on January

25 the 14th, 2021 that prompted that

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2 to be marked Exhibit 8. This is your

3 letter of January 15, 2021.

4 (Exhibit 8, Correspondence

5 Dated January 15, 2021, marked for

6 identification, as of this date.)

7 (Brief off-record discussion.).

8 THE WITNESS: Oh, 7 is to come?

9 MR. RUKAVINA: Yes, sir.

10 Q. Do you recognize Exhibit 8?

11 A. I do, yes.

12 Q. Okay. Do you recall authorizing

13 this to be sent under your electronic

14 signature?

15 A. Yes.

16 Q. Okay. Do you recall what prompted

17 you to send Exhibit 8?

18 A. Yes.

19 Q. What was it?

20 A. I believe the -- I think it's the

21 day before I was on the stand in a court

22 hearing, and I testified that I'd accelerated

23 this note. Mr. Dondero was there.

24 It appears to me that he

25 immediately learned or realized, oh, my gosh,

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2 \$1.4 million payment?

3 A. I -- I think so, either the 14th or

4 the 13th. I know -- I recall testifying to

5 the acceleration and that the note -- the

6 payment had been missed and we had

7 accelerated it.

8 Q. Do you recall what -- was that like

9 the Dondero PI -- do you recall what

10 proceeding that was?

11 A. I don't -- I don't recall --

12 (Simultaneous speaking.)

13 A. -- at least two that week, I

14 believe.

15 Q. Sitting here today, you think it

16 was January 13 or January 14?

17 A. Yes.

18 Q. Okay. Did you ask Mr. Waterhouse

19 anything about that \$1.4 million payment

20 before you sent Exhibit 8?

21 A. No.

22 Q. Okay. Did you ask anyone else at

23 the debtor -- again, we're excluding legal

24 counsel.

25 Did you ask anyone else at the

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1 J. Seery
2 debtor as to anything having to do with why
3 that \$1.4 million payment had come in?
4 A. I did not. I don't -- well, I
5 don't recall doing that.
6 Q. Why didn't you return -- I'm sorry,
7 strike that.
8 Why didn't the debtor return the
9 payment?
10 A. Because I would apply it on account
11 and reduce the total amount owed and make the
12 demand again.
13 Q. Why wouldn't you have applied it to
14 the amounts owing under the shared services
15 agreement and payroll reimbursement
16 agreement?
17 A. I believe because it was on account
18 of the note, and the note had already been
19 accelerated, so any payments are on account
20 of the note.
21 Q. What led you to believe that the
22 payment was on account of the note?
23 A. I don't recall.
24 Q. So until you read Mr. Waterhouse's
25 transcript, you had no knowledge of his -

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1 J. Seery
2 (Brief off-record discussion.)
3 VIDEO TECHNICIAN: The time is
4 3:40. We're going off the record.
5 (Recess taken.)
6 VIDEO TECHNICIAN: The time is
7 3:42. We're back on the record.
8 (Brief off-record discussion.)
9 MR. RUKAVINA: So during --
10 during the break, Mr. Morris was kind
11 enough to print out exhibit -- the --
12 the prior report that we had seen that
13 is now marked as Exhibit 7.
14 And I will represent to you,
15 Mr. Seery, and to the Court that Exhibit
16 7 is a true and correct copy of what was
17 previously on the Zoom, care of my
18 associate.
19 Okay. Sir, we're going to now go
20 to 9, Exhibit 9, which is going to be the
21 shared services agreement.
22 (Exhibit 9, Amended and Restated
23 Shared Services Agreement, marked for
24 identification, as of this date.)
25 Q. Now, sir, I've handed you

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1 J. Seery
2 let's just say January 12, whatever day it
3 was - conference with Mr. Dondero, correct?
4 A. None.
5 Q. And no knowledge of what they may
6 have discussed?
7 A. No.
8 Q. Okay. Can you think of a reason
9 why Dondero would have caused that
10 \$1.4 million payment to have been made?
11 MR. MORRIS: Objection to the
12 form of the question.
13 A. Can I speculate?
14 Q. If you're speculating, tell me
15 you're speculating, sure.
16 A. I -- I can speculate, yeah.
17 Q. Speculate.
18 A. He realized that the note had been
19 accelerated and that he was going to try to
20 decelerate it.
21 You know, one thing sort of
22 interesting that -- well, maybe there's a
23 question on it.
24 MR. RUKAVINA: Let's go off the
25 record for a second.

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1 J. Seery
2 Exhibit 9, and you're certainly free to read
3 it. This purports to be the amended and
4 restated shared services agreement between
5 NexPoint and the debtor.
6 I'll represent to you that it is a
7 true and correct copy, as filed by your
8 attorneys. And if I'm wrong about that, then
9 certainly you're not going to be held to your
10 answers.
11 But just sitting here today, do you
12 have any reason to suspect the authenticity
13 of Exhibit 9?
14 A. No.
15 Q. Okay. All right. So this is
16 called the "Amended and Restated Shared
17 Services Agreement" as of January 1, 2018.
18 To the best of your knowledge, was
19 this the latest iteration prior to its
20 termination or were there any subsequent
21 amendments?
22 MR. MORRIS: Objection to the
23 form of the question.
24 A. I don't recall.
25 Q. And obviously the document speaks

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1 J. Seery
2 for itself, but as the CRO/CEO, what was your
3 understanding of what this contract
4 effectuated as between the debtor and
5 NexPoint?
6 A. Part of the way the debtor was set
7 up and the way it was run was that the debtor
8 would provide certain services to certain of
9 the affiliated entities. And those would be,
10 to some degree, embodied in this agreement.
11 Oftentimes the debtor provided
12 services to affiliates without any agreement,
13 oftentimes they provided additional services
14 that may not have been in the agreement, and
15 that was because they were such closely
16 related parties.
17 Q. As of December 2020, do you agree
18 with me -- as of December 31, 2020, do you
19 agree with me that this agreement had not yet
20 been terminated?
21 A. As of December 20?
22 Q. I'm sorry.
23 As of December 31, 2020, do you
24 agree with me that this agreement had not yet
25 been terminated?

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1 J. Seery
2 services.
3 Q. And when you said affiliated
4 entity, in this instance, are you referring
5 to NexPoint?
6 A. Uh-huh. Yes, I am.
7 Q. Okay. When you say back office
8 services, would that have included, as of
9 December 2020, helping NexPoint ensure that
10 NexPoint pays from its own funds its
11 obligations coming due?
12 A. I -- I think as part of back office
13 services -- that's the heading of the
14 section, and so part of it is to assist in
15 preparing payments and calculating what those
16 should be.
17 Q. So obviously the debtor wasn't
18 responsible for paying NexPoint's
19 obligations, right?
20 A. That's correct.
21 Q. But the debtor had some level of
22 responsibility to help NexPoint pay its
23 accounts payable on a timely basis, correct?
24 A. Yes.
25 Q. And that would have been from

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1 J. Seery
2 A. Yeah, I think the termination
3 notice had gone out but it had not yet become
4 effective.
5 Q. Okay. And we see here what -- some
6 of the services that the debtor was
7 providing. We see it on the top of page 4,
8 if you want to flip there.
9 It says, amongst other things,
10 finance and accounting, payments,
11 bookkeeping, cash management.
12 Do you see all that, sir?
13 A. Yes.
14 Q. Okay. Do you have an understanding
15 of what those terms under this agreement
16 meant?
17 MR. MORRIS: Objection to the
18 form of the question.
19 A. Yes, I do.
20 Q. Okay. Give me your understanding,
21 please, sir.
22 A. The debtor provided back office
23 support for -- under those terms, for the
24 affiliated entity and received some form of
25 remuneration in exchange for that and other

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1 J. Seery
2 NexPoint's funds?
3 A. Correct.
4 Q. And is the same true for NexPoint's
5 loan obligations?
6 A. I believe so, yes.
7 Q. So if Mr. Waterhouse testified that
8 it was reasonable for NexPoint, in December
9 2020, to rely on the debtor to facilitate the
10 December 31 note payment, would you have
11 reason to disagree with that?
12 MR. MORRIS: Objection to the
13 form of the question.
14 A. I would, yes.
15 Q. Okay. And what's your disagreement
16 and your reason for the disagreement?
17 A. Because the debtor does work to
18 figure out how much payments are, whether
19 they be on notes or whether they be for some
20 other service that the affiliated entity has
21 gotten.
22 The debtor's accounting team puts
23 together that schedule, and then the debtor
24 needs direction from an officer at NexPoint
25 to make the payment. If the debtor has

<p style="text-align: right;">Page 118</p> <p>1 J. Seery</p> <p>2 already been told don't make the payment, it</p> <p>3 wouldn't be scheduled.</p> <p>4 Q. So, to summarize, it's ultimately</p> <p>5 up to NexPoint to specifically approve or</p> <p>6 disapprove any potentially scheduled</p> <p>7 payments?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And in this instance, what</p> <p>10 you've learned is that Mr. Waterhouse was</p> <p>11 told by Dondero, don't make the payment?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And that -- that is the sum</p> <p>14 of your understanding as to why the</p> <p>15 December 31 payment wasn't made?</p> <p>16 A. I don't think that's the sum of it.</p> <p>17 There's -- there's emails that show that</p> <p>18 Ms. Hendrix prepared and requested from</p> <p>19 Mr. Waterhouse payment of these amounts</p> <p>20 okayed and he approves them. So they -- they</p> <p>21 are the amounts that are permitted to be</p> <p>22 approved, and they're all to third parties.</p> <p>23 None of them are to HCMLP.</p> <p>24 Q. Are you aware of any email where</p> <p>25 Ms. Hendrix prepared the December 31 note</p>	<p style="text-align: right;">Page 119</p> <p>1 J. Seery</p> <p>2 payment by NexPoint for Mr. Waterhouse's</p> <p>3 approval?</p> <p>4 A. No, I'm not.</p> <p>5 Q. If there is no such email, do you</p> <p>6 have any explanation or understanding for why</p> <p>7 there wouldn't be such an email?</p> <p>8 A. Sure.</p> <p>9 Q. Okay. What is it?</p> <p>10 A. She was told not to make the</p> <p>11 payment.</p> <p>12 Q. So, consequently, she did not</p> <p>13 include it in any upcoming payment list?</p> <p>14 A. Correct.</p> <p>15 Q. And that goes back to what you</p> <p>16 tell -- told me before, that Waterhouse told</p> <p>17 her what Dondero told him, right?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. And are you aware that</p> <p>20 Mr. Waterhouse said -- testified that that</p> <p>21 instruction had come sometime in early</p> <p>22 December of 2020?</p> <p>23 A. I don't recall.</p> <p>24 This was in the testimony</p> <p>25 yesterday?</p>
<p style="text-align: right;">Page 120</p> <p>1 J. Seery</p> <p>2 Q. From a couple days ago.</p> <p>3 A. Yeah, two days ago, I'm sorry.</p> <p>4 I don't recall the specific dates</p> <p>5 that he said that.</p> <p>6 Q. Well, whatever the -- whatever the</p> <p>7 dates that he testified about were with</p> <p>8 respect to the Dondero discussion, would you</p> <p>9 have any reason to dispute those dates?</p> <p>10 A. No.</p> <p>11 Q. Okay. So, sir, is it your</p> <p>12 understanding that having been given that</p> <p>13 instruction by Mr. Dondero, that employees of</p> <p>14 the debtor, including Mr. Waterhouse, had no</p> <p>15 further obligation with respect to that</p> <p>16 December 31 payment?</p> <p>17 MR. MORRIS: Objection to the</p> <p>18 form of the question.</p> <p>19 A. I think they -- I think they took</p> <p>20 the direction of Mr. Dondero to heart and</p> <p>21 followed his direction.</p> <p>22 Q. Is it your belief that they had no</p> <p>23 obligation to subsequently ask Mr. Dondero</p> <p>24 whether he meant it?</p> <p>25 MR. MORRIS: Objection to the</p>	<p style="text-align: right;">Page 121</p> <p>1 J. Seery</p> <p>2 form of the question.</p> <p>3 A. Absolutely.</p> <p>4 Q. Did they have no such obligation?</p> <p>5 A. No.</p> <p>6 Q. Is it your understanding that they</p> <p>7 had no obligation to communicate with</p> <p>8 Mr. Dondero and inform him of the</p> <p>9 consequences that would happen if that</p> <p>10 payment wasn't made?</p> <p>11 MR. MORRIS: Objection to the</p> <p>12 form.</p> <p>13 (Simultaneous speaking and</p> <p>14 reporter interjection.)</p> <p>15 A. I -- I don't think it would be</p> <p>16 appropriate for the employees of the debtor</p> <p>17 to go to the founder of the organization, who</p> <p>18 owns and controls all of the entities, after</p> <p>19 he's given them a direction, to go challenge</p> <p>20 his direction. And that's just not the way</p> <p>21 Highland ever worked, from what I could see.</p> <p>22 Q. Did you believe, in December of</p> <p>23 2020, that employees of Highland had a</p> <p>24 conflict of interest with respect to their</p> <p>25 dual role as employees of NexPoint with</p>

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1 J. Seery
2 respect to that promissory note?
3 A. Not specifically with respect to
4 the promissory note, but generally it was a
5 concern of mine throughout the case.
6 Q. Well, we can -- can we agree on
7 this; that when Mr. Dondero gave
8 Mr. Waterhouse that instruction,
9 Mr. Waterhouse should have known that that
10 instruction was not on behalf of Highland
11 because Mr. Dondero no longer had any
12 management role with Highland?
13 MR. MORRIS: Objection to the
14 form of the question.
15 A. I think he should have known that,
16 yes.
17 Q. And can we therefore agree that
18 Mr. Waterhouse should have known that that
19 instruction from Dondero was coming from
20 NexPoint --
21 MR. MORRIS: Objection --
22 (Simultaneous speaking.)
23 Q. -- Dondero wearing his NexPoint
24 hat?
25 A. I -- I think you're trying to parse

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1 J. Seery
2 Mr. Waterhouse to have fiduciary duties, in
3 December of 2020, to the debtor?
4 A. Yes.
5 Q. Okay. That's the role that I'm
6 asking about, sir.
7 Mr. Waterhouse simultaneously being
8 the CFO of the debtor, the payee on a large
9 promissory note, and the treasurer of
10 NexPoint, the maker on that same promissory
11 note, did you not perceive there to be any
12 conflict of interest?
13 MR. MORRIS: Objection to the
14 form of the question.
15 A. No, no more than -- I -- I
16 perceived a concern throughout the case, but
17 no more than there had been at any other time
18 with any of these related entities.
19 Q. Except, sir, that at this time,
20 Mr. Waterhouse had a fiduciary duty to the
21 bankruptcy estate.
22 Would you agree with that?
23 A. Yes.
24 Q. Okay. And do you agree that his
25 fiduciary duty to the bankruptcy estate, in

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1 J. Seery
2 something that doesn't exist. There's no
3 hats. There's one hat for Mr. Dondero. He
4 controls all of the entities other than
5 HCMLP.
6 And his edicts, whether they be
7 from prior to our taking over HCMLP as
8 independent directors or with respect to any
9 of the other entities, are final.
10 Q. Mr. Dondero might not have had two
11 hats, but in December of 2020, would you
12 agree that Mr. Waterhouse wore two hats?
13 A. Yes, he did.
14 Q. The CFO of the debtor and the
15 treasurer of NexPoint?
16 A. That's correct.
17 Q. And both being executive officer
18 positions, correct?
19 A. Correct.
20 Q. Pardon me. With, to your
21 understanding, under Delaware law, fiduciary
22 duties to his respective principals, correct?
23 A. I believe these are both Delaware
24 but I'm not positive.
25 Q. Certainly you would have expected

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1 J. Seery
2 December of 2020 with respect to this
3 promissory note, might have conflicted with
4 his duties - whatever they were - to
5 NexPoint?
6 (Simultaneously speaking.)
7 (Reporter interjection.)
8 A. I'm sorry.
9 MR. MORRIS: Objection to the
10 form of the question.
11 A. Potentially but not necessarily.
12 Mr. Waterhouse took direction from the man in
13 control of NexPoint. That man directs his
14 inferiors, which would include the treasurer.
15 So following that direction doesn't cause any
16 conflict with respect to NexPoint.
17 Q. On the debtor's side, you mentioned
18 before, for example, that -- that you
19 believed after the payment was made, that
20 your fiduciary duties necessitated the
21 calling of the note, right?
22 A. I don't know if they necessitated
23 it. They certainly informed it.
24 Q. Informed it.
25 But -- so they certainly informed

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1 J. Seery
2 it, correct?
3 A. Yes.
4 Q. Okay. And would you expect
5 Mr. Waterhouse to have had similar duties to
6 the bankruptcy estate?
7 MR. MORRIS: Objection to the
8 form of the question.
9 A. No, I believe that would be my
10 direction, if I had -- I would be his
11 superior at HCMPLP. If I directed that we
12 collect it, we collect it. If I direct that
13 we don't, then we don't.
14 Q. Is it fair to say, from your prior
15 testimony, that at no time prior to January
16 1, 2021 did Mr. Waterhouse, Mr. Klos or
17 Ms. Hendrix tell you about the Dondero
18 instruction not to make any more payments?
19 MR. MORRIS: Objection to the
20 form of the question.
21 A. Prior to when?
22 Q. January 1, 2021.
23 A. I -- I don't -- as I said, I don't
24 recall if it was right around the time of
25 the -- the payment had been failed to be made

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1 J. Seery
2 Q. Well, but you could have learned
3 that Mr. Dondero had instructed that the
4 December 31 payment not be made ahead of
5 time, could you not have?
6 A. I -- I could have, but I did not
7 learn that.
8 Q. Okay. That's -- that's what I'm
9 trying -- that's what I'm trying to
10 ascertain. I'm trying to refresh your
11 memory.
12 So you can now testify that prior
13 to the payment not being made, you did not
14 know about the Dondero instruction not to
15 make the payment?
16 A. With respect to the -- the note
17 payment, that's correct.
18 Q. Okay. So what -- that's what I
19 mean.
20 It would have had to have been
21 January 1 or after -- January 1, 2021 or
22 after that you learned about that?
23 A. I would have to have learned of the
24 effect of it. If the -- if the actual
25 statement was don't make any payments

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1 J. Seery
2 on the 31st, and we sent it, or if it was in
3 December. I believe I testified to that
4 before. And the shared service payments
5 hadn't been made, so there may have been some
6 discussion that Dondero's cut it off.
7 Q. Well, I -- I think I asked you
8 before about the timing in reference to the
9 January 7 letter, when --
10 A. Correct.
11 Q. -- you said it might have been
12 right around there.
13 Am, am I understanding -- or strike
14 all that.
15 Is it your testimony that maybe you
16 learned about the Dondero instruction on or
17 before December 31, 2020?
18 MR. MORRIS: Objection, asked and
19 answered.
20 A. That -- that's correct. I don't
21 recall when I learned but, factually, I know
22 that the payments on shared services hadn't
23 been made. I could not have known that the
24 December 31 payment wouldn't have been made
25 on December 31 until after December 31.

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1 J. Seery
2 irrespective of when they're due, that could
3 have been made in early December. I wouldn't
4 have known the effect of it.
5 I knew the effect with respect to
6 the shared service because it wouldn't be
7 paid. He might have changed his mind and I
8 didn't know that.
9 Q. Okay. I'm going to -- I'm going to
10 try again.
11 On or about January 31, 2020 --
12 A. December 31.
13 Q. Thank you.
14 On or before December 31, 2020,
15 sitting here today, do you remember being
16 informed of the Dondero instruction not to
17 make payments?
18 MR. MORRIS: Objection, asked and
19 answered.
20 A. Again, I don't recall the exact
21 date I learned. I believe I certainly knew
22 that the shared service payments had not been
23 made. I believe I knew that that related to
24 a Dondero edict.
25 Q. So you're saying shared services in

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1 J. Seery
2 response to my answer.
3 Why, why does -- why is that
4 relevant? Because from that you deduced that
5 all payments were to cease?
6 A. No, they were due before.
7 Q. That's -- okay, I apologize.
8 So this shared services contract
9 required periodic payments, right?
10 A. Correct.
11 Q. And, and -- and are you saying that
12 before December 31, 2020, NexPoint had
13 already failed to make at least one of those
14 periodic payments?
15 A. I believe so, yes.
16 Q. Okay. Did you, at that point in
17 time, inquire as to why that payment hadn't
18 been made?
19 A. I don't recall, but I loosely
20 recall - but I don't know exactly when I
21 learned it - that there had been this edict.
22 Q. Okay. I'll use that word "edict."
23 That's the one -- we're both saying the same
24 thing, right --
25 A. Correct.

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1 J. Seery
2 think -- thank you. I understand now.
3 So you knew that there had been an
4 edict not to make payments, you just didn't
5 realize definitively that that edict also
6 applied to the promissory note payment?
7 A. Correct.
8 Q. Okay. By December 31, 2020, had
9 the debtor laid off certain people, certain
10 employees, let's just say for cost-cutting
11 purposes as opposed to regular terminations,
12 you know -- you know what I'm trying to say?
13 Had there been just --
14 A. Had there been a RIF?
15 Q. A reduction --
16 (Simultaneous speaking.)
17 Q. Yes, yes.
18 A. No, there had not been.
19 Q. So to your understanding, the
20 debtor personnel that would have had any
21 involvement with these treasury and payment
22 services, helping affiliated companies make
23 their payments, all those personnel were
24 still there?
25 A. Largely the same.

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1 J. Seery
2 Q. -- where Dondero tells Waterhouse
3 no more payments, right?
4 A. Fair enough.
5 Q. So sitting here today, it is
6 possible that before December 31, 2020, you
7 had heard vis-a-vis Ms. Hendrix that NexPoint
8 would not be making its scheduled payment
9 because of the Dondero edict?
10 A. Scheduled payment on the note?
11 Q. On the note.
12 A. No, I don't think that's fair.
13 Q. That's all I'm -- okay. So I'm --
14 I'm asking just about the note.
15 As of December 31, 2020, sitting
16 here today, do you remember having heard that
17 NexPoint would not be making its December 31
18 payment because of the Dondero edict?
19 A. I pretty clearly recall that the
20 payments had not been made, and I had heard
21 that there had been an edict.
22 The full implication of that edict
23 and whether it extended to the note I did not
24 know until the payment was missed.
25 Q. Understood. I think that -- I

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1 J. Seery
2 Q. Okay. When you say largely, can
3 you think of anyone right now that was no
4 longer there or changed?
5 A. Not specifically. There were --
6 there was some attrition during 2020 and we
7 didn't specifically replace some of those,
8 but some -- some people we did replace. We
9 actually hired people in 2020.
10 Q. But as with respect -- pardon me.
11 As it respects -- strike that.
12 With respect only to the payment
13 we're talking about, i.e. scheduling future
14 permission to pay them, all those personnel
15 that would have had a role in -- on that for
16 the debtor were still there in December 2020?
17 A. I -- I believe that group was
18 largely the same.
19 Q. Waterhouse, Klos and Hendrix?
20 A. Ellison Rober -- I can't remember
21 her last name. So there -- there were a
22 couple others in that group as well, and then
23 there were some other junior people that
24 would have assisted them.
25 Q. I'm going to ask you a hypothetical

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1 J. Seery
2 question. Let's say that on December the
3 10th, 2020, Hendrix tells you that Dondero
4 has instructed that the note payment by
5 NexPoint will not be made.
6 Would you have issued any
7 instructions to employees of the debtor
8 following up on that, what you just learned?
9 MR. MORRIS: Objection to the
10 form of the question.
11 A. I, I don't know -- know if --
12 knowing what I know now and that they hadn't
13 made the shared service payments at that time
14 and that it seemed to be going towards
15 litigation, I would not have done anything, I
16 don't think.
17 Q. Okay. So, again, to round off this
18 topic, you do not believe that employees of
19 the debtor had any obligation, after
20 Dondero's edict, to follow up with NexPoint
21 about its upcoming note payment?
22 A. No.
23 Q. Okay. Did you consult this shared
24 services agreement, to your recollection,
25 before your January 7, 2021 letter?

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1 J. Seery
2 in this agreement.
3 Did I paraphrase that correctly?
4 A. Roughly, yes.
5 Q. Okay. And if we flip to Section
6 6.01, sir, and -- and take a second, please,
7 to read that section.
8 A. (Document review.)
9 Okay.
10 Q. And -- and you might want to look
11 at the definition of covered person real
12 quick. I believe you'll find it includes the
13 debtor.
14 A. Okay.
15 Q. So I read this and, and -- and it
16 says (as read):
17 Except as otherwise
18 expressly provided herein, each
19 covered person shall discharge its
20 duties under this agreement with
21 the care, skill, prudence and
22 diligence under the circumstances
23 then prevailing that a prudent
24 person acting in a like capacity
25 and familiar with such matters

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1 J. Seery
2 A. I certainly --
3 MR. MORRIS: Objection to the --
4 (Simultaneous speaking and
5 reporter interjection.)
6 A. I certainly was familiar with the
7 agreement and had consulted it numerous
8 times.
9 If your question is did I consult
10 this agreement with respect to that demand
11 letter, the answer's no.
12 Q. Okay. If you'll turn to Section
13 2.06 of this agreement for me, sir.
14 And certainly you can look at the
15 definitions, but the staff and services
16 provider, that's the debtor, right?
17 A. Yes.
18 Q. And management company, that's
19 NexPoint, right?
20 A. Yes.
21 Q. Okay. So Section 2.06, the last
22 sentence, sir, that basically says that the
23 debtor will not have any duties or
24 obligations to NexPoint unless those duties
25 and obligations are specifically provided for

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1 J. Seery
2 would use in the conduct of an
3 enterprise of a like character and
4 with like aims.
5 Did I read that correctly?
6 A. Roughly.
7 Q. Okay. Do you have any
8 understanding of that section, sitting here
9 today?
10 A. I know what every one of those
11 words mean.
12 Q. Okay. Reading that, do you still
13 believe that Mr. Waterhouse and Mr. Klos and
14 Ms. Hendrix had no duty to go back to
15 Mr. Dondero and advise him of the
16 ramifications of his edict and try to
17 persuade him otherwise?
18 MR. MORRIS: Objection to the
19 form of the question.
20 A. Yes, I do.
21 Q. Okay.
22 A. I believe that they didn't have any
23 further duty.
24 Q. If you had issued an edict in the
25 heat of the moment or based on bad advice,

<p style="text-align: right;">Page 138</p> <p>1 J. Seery</p> <p>2 would you expect your officers to come to you</p> <p>3 and say, Mr. Seery, just so you know, there's</p> <p>4 going to be consequences, please reconsider?</p> <p>5 MR. MORRIS: Objection to the --</p> <p>6 A. Me personally?</p> <p>7 Q. Yes.</p> <p>8 MR. MORRIS: -- form of the</p> <p>9 question.</p> <p>10 (Simultaneous speaking and</p> <p>11 reporter interjection.)</p> <p>12 A. My relationship with people who</p> <p>13 work with or for me is very different than I</p> <p>14 understand Mr. Dondero's. But as a</p> <p>15 professional and someone who's been doing</p> <p>16 this for thirty years, if I give my</p> <p>17 direction, I expect it to be followed. And I</p> <p>18 know, from what I have heard and seen,</p> <p>19 Mr. Dondero is that to the nth degree.</p> <p>20 Q. So, again, I understand that you</p> <p>21 expect your instructions, Mr. Seery's</p> <p>22 instructions, to be followed.</p> <p>23 A. Yes.</p> <p>24 Q. But from your officers, do you</p> <p>25 believe that they have an obligation to come</p>	<p style="text-align: right;">Page 139</p> <p>1 J. Seery</p> <p>2 to you, after you issue an instruction and if</p> <p>3 they believe it's bad for the company, to</p> <p>4 dissuade you of that instruction?</p> <p>5 A. I, I --</p> <p>6 MR. MORRIS: Objection to the</p> <p>7 form of the question.</p> <p>8 A. I would prefer that they did, yes.</p> <p>9 Q. Okay. NexPoint was paying the</p> <p>10 debtor's employees in this -- including</p> <p>11 Mr. Waterhouse, Mr. Klos and Ms. Hendrix, for</p> <p>12 services under this contract, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And other than amounts in</p> <p>15 controversy that are not insignificant,</p> <p>16 NexPoint paid millions of dollars to the</p> <p>17 debtor under this contract, did it not?</p> <p>18 A. I don't believe it paid millions --</p> <p>19 Q. Okay.</p> <p>20 A. -- of dollars.</p> <p>21 MR. MORRIS: Yeah, objection.</p> <p>22 Q. Okay. But it paid -- it paid some</p> <p>23 amount under this contract?</p> <p>24 A. I would say for the services, one</p> <p>25 would easily say a paltry amount. And the</p>
<p style="text-align: right;">Page 140</p> <p>1 J. Seery</p> <p>2 vehicle, NPA, was used largely to strip</p> <p>3 assets and value out of Highland.</p> <p>4 Q. But the same Mr. Waterhouse that</p> <p>5 has a duty to you, as the chief executive</p> <p>6 officer, to tell you that one of your courses</p> <p>7 of action is going to be detrimental has no</p> <p>8 such duty to Mr. Dondero, because</p> <p>9 Mr. Dondero's a tyrant?</p> <p>10 MR. MORRIS: Objection to the</p> <p>11 form of the question.</p> <p>12 A. I said I would prefer that a</p> <p>13 Mr. Waterhouse or anyone else who works for</p> <p>14 or with me advise me if they think the course</p> <p>15 of action I'm taking is incorrect. If I</p> <p>16 listen to their advice and make my decision,</p> <p>17 then we live with my decision. I don't want</p> <p>18 to revisit it ten times.</p> <p>19 So I don't know whether</p> <p>20 Mr. Waterhouse told Mr. Dondero that that</p> <p>21 course might have ramifications. One would</p> <p>22 think that a man who's run these businesses</p> <p>23 for this long and had put this company into</p> <p>24 bankruptcy and had left hundreds of millions</p> <p>25 of dollars strewn across the street of</p>	<p style="text-align: right;">Page 141</p> <p>1 J. Seery</p> <p>2 losses, that one would have some</p> <p>3 understanding of what those ramifications</p> <p>4 might be, and maybe Mr. Waterhouse didn't. I</p> <p>5 don't know; I wasn't there.</p> <p>6 Q. Do you agree, sir, that Section 601</p> <p>7 also applied to you with respect to -- as a</p> <p>8 covered person, with respect to how you</p> <p>9 conducted business under this contract?</p> <p>10 Do you --</p> <p>11 A. Could I -- no, I think it -- well,</p> <p>12 I can --</p> <p>13 Q. Take a second -- take a second to</p> <p>14 read the definition of covered person.</p> <p>15 A. Uh-huh.</p> <p>16 Q. And, look, we can agree that you're</p> <p>17 not making any legal conclusions here. I'm</p> <p>18 just...</p> <p>19 A. (Document review.)</p> <p>20 I believe it does, yes.</p> <p>21 Q. Yet before you sent your January 7</p> <p>22 letter, you did not check to see whether</p> <p>23 NexPoint had made any prepayments on the</p> <p>24 note, correct?</p> <p>25 A. I think I testified that I didn't</p>

<p style="text-align: right;">Page 142</p> <p>1 J. Seery</p> <p>2 check, but our -- my understanding, based</p> <p>3 upon the work of the accounting group, was</p> <p>4 that the payment was due and scheduled. It</p> <p>5 had to be paid.</p> <p>6 If it had not been due, it had been</p> <p>7 prepaid, it would not have been scheduled.</p> <p>8 So there was no need for me to go doublecheck</p> <p>9 that.</p> <p>10 Q. And you did not separately inquire</p> <p>11 of anyone at the debtor as to whether</p> <p>12 NexPoint had a defense to your January 7</p> <p>13 letter, correct?</p> <p>14 MR. MORRIS: Objection to the</p> <p>15 form of the question.</p> <p>16 A. No, I did not.</p> <p>17 Q. Is that not, sir, something that</p> <p>18 would have been prudent to do pursuant to</p> <p>19 Section 601, check as to whether NexPoint had</p> <p>20 made a prepayment or had a defense?</p> <p>21 MR. MORRIS: Objection --</p> <p>22 A. I --</p> <p>23 (Simultaneous speaking.)</p> <p>24 A. -- I don't believe that's something</p> <p>25 that would have been required by this or any</p>	<p style="text-align: right;">Page 143</p> <p>1 J. Seery</p> <p>2 other provision.</p> <p>3 Q. Do you believe that Section 601</p> <p>4 played any role at all, now that you're</p> <p>5 reading it, with respect to your decision to</p> <p>6 call the note as opposed to call NexPoint and</p> <p>7 say, hey, what happened?</p> <p>8 A. I don't -- I don't believe it</p> <p>9 governs it at all.</p> <p>10 Q. Do you believe it governed in any</p> <p>11 respect whatever Mr. Waterhouse and</p> <p>12 Mr. Dondero discussed on or about January --</p> <p>13 January 12, 2021?</p> <p>14 A. I don't know the substance of their</p> <p>15 discussion, other than that the -- what we've</p> <p>16 referred to as the edict, at least that's as</p> <p>17 it's been reported. So I don't know what</p> <p>18 colloquy they had with respect to</p> <p>19 ramifications of making a payment or not.</p> <p>20 Clearly, there should have been</p> <p>21 more ramifications for not making the shared</p> <p>22 services payments, but Mr. Dondero issued a</p> <p>23 similar edict or --</p> <p>24 (Simultaneous speaking.)</p> <p>25 Q. Mr. Dondero didn't issue a similar</p>
<p style="text-align: right;">Page 144</p> <p>1 J. Seery</p> <p>2 edict?</p> <p>3 A. I said he did.</p> <p>4 Q. He did.</p> <p>5 So why didn't you terminate the</p> <p>6 services agreement immediately upon</p> <p>7 NexPoint's failure to pay?</p> <p>8 A. Well, we would have, I think, if we</p> <p>9 thought we could. We also had an issue that</p> <p>10 both NexPoint and HCMFA were providing</p> <p>11 services to retail funds and had no ability</p> <p>12 to provide any of those services without</p> <p>13 Highland. They literally had left themselves</p> <p>14 completely exposed, while just stripping out</p> <p>15 fees.</p> <p>16 Q. Do you believe with respect to</p> <p>17 Section 601, standard of care, that the</p> <p>18 parties prior course of dealing, i.e. rolling</p> <p>19 up prior notes, had any role on January 7,</p> <p>20 2021?</p> <p>21 MR. MORRIS: Objection to the</p> <p>22 form of the question.</p> <p>23 A. No, I don't.</p> <p>24 Q. Okay. Did you take any prior</p> <p>25 course of action between the parties into</p>	<p style="text-align: right;">Page 145</p> <p>1 J. Seery</p> <p>2 account when you executed and issued your</p> <p>3 January 27, 2021 letter?</p> <p>4 A. Certainly. The payments are</p> <p>5 typically made on time, and if they're not</p> <p>6 paid, then it's prudent and required to</p> <p>7 accelerate the note.</p> <p>8 Q. But five times before, you -- you</p> <p>9 knew by then that five times before, demand</p> <p>10 notes were rolled up into a term note, which</p> <p>11 you said before, I believe, was for an</p> <p>12 improper purpose?</p> <p>13 MR. MORRIS: Objection to the</p> <p>14 form --</p> <p>15 A. At least three of them that are</p> <p>16 sub -- subject to the current litigation. I</p> <p>17 don't recall if it was five, but this one</p> <p>18 contained five notes, if -- three term notes</p> <p>19 that were rolled notes. But those were done</p> <p>20 prior to bankruptcy and they were done with</p> <p>21 Mr. Dondero on both sides of the transaction.</p> <p>22 Q. So your borrower, who owes you</p> <p>23 24 million and change that you're under a</p> <p>24 contract with that the borrower is paying</p> <p>25 you, where you provide employees to the</p>

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1 J. Seery
2 borrower, and your affiliate entity misses a
3 scheduled payment, you believe that you have
4 no obligation to do anything before you
5 called the note immediately due?
6 A. That -- that's absolutely correct.
7 MR. RUKAVINA: Okay. Do you mind
8 if we take another restroom break?
9 MR. MORRIS: Sure.
10 MR. RUKAVINA: I'm getting
11 near -- near the end. Five minutes,
12 please.
13 (Brief off-record discussion.)
14 VIDEO TECHNICIAN: The time is
15 4:16. We're off the record.
16 (Recess taken.)
17 VIDEO TECHNICIAN: The time is
18 4:21. We're back on the record.
19 BY MR. RUKAVINA:
20 Q. Did you have a view, as of December
21 2020 or January 2021, as to whether the
22 debtor owed any fiduciary duties to NexPoint?
23 MR. MORRIS: Objection to the
24 form of the question.
25 A. I -- I believe I did.

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1 J. Seery
2 had written policies and procedures in place
3 with respect to how it conducted its
4 business?
5 A. I'm not sure.
6 MR. RUKAVINA: Okay. You can put
7 that down, sir.
8 (Brief off-record discussion.)
9 MR. RUKAVINA: So this is going
10 to be Exhibit 10.
11 (Exhibit 10, Email Chain
12 D-NNL-007578 - D-NNL-007579, marked
13 for identification, as of this date.)
14 BY MR. RUKAVINA:
15 Q. Sir, you are not on this email
16 chain, so I don't expect to authenticate it.
17 But have you seen this email chain
18 before, between Mr. Waterhouse and
19 Ms. Hendrix on January 12, 2021?
20 A. I believe I have, yes.
21 Q. Okay. Was it in preparation for
22 this deposition or had you seen it before?
23 A. Only in preparation for the
24 deposition.
25 Q. Were you aware that Mr. Waterhouse

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1 J. Seery
2 Q. And what was your view?
3 A. I don't think -- certainly by that
4 time, if there ever had been, I don't think
5 by that time there were any fiduciary duties
6 owed.
7 Q. Okay. Real quick, we're still on
8 this shared services agreement, sir, page 4.
9 This is a list of services to be provided.
10 I'm just -- you can read it in detail, but I
11 just have a very simple question. 4B talks
12 about legal compliance risk analysis.
13 In December of 2020, was the debtor
14 providing legal services to NexPoint?
15 A. I don't believe so, or at least not
16 any -- there might have been some assistance.
17 I'm trying to think what would have been done
18 at that time in terms of support, but there
19 certainly -- compliance was probably
20 transferred pretty fully by then.
21 I don't think NexPoint was involved
22 in any litigation at that point, certainly
23 not that the debtor was supporting, so I -- I
24 don't think very much, if anything.
25 Q. Okay. Do you know whether NexPoint

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1 J. Seery
2 was asking Ms. -- asking Ms. Hendrix for the
3 total principal on this note on January 12,
4 2021?
5 I'm sorry, were you aware of it at
6 about that point in time?
7 A. No, not until I saw this email.
8 Q. Okay. Did you ever discuss -- so I
9 think -- I think you've -- you've said it
10 earlier, that you did not know until
11 Mr. Waterhouse's deposition that
12 Mr. Waterhouse and James Dondero had a
13 communication on January 12, 2021, right?
14 A. I did not know.
15 Q. Did, did -- did you know from
16 Ms. Hendrix that she had had any
17 communications with Mr. Waterhouse on or
18 about January 12, 2021, about how much the
19 missed payment was?
20 A. No, I did not.
21 Q. Okay. Have you asked her about
22 what this email was in reference to since
23 you've seen this email?
24 A. No, I have not.
25 MR. RUKAVINA: Okay. This is

<p style="text-align: right;">Page 150</p> <p>1 J. Seery</p> <p>2 going to be Exhibit 11, sir.</p> <p>3 (Exhibit 11, Email Chain</p> <p>4 D-NNL-028514 - D-NNL-028515, marked</p> <p>5 for identification, as of this date.)</p> <p>6 Q. So, Mr. Seery, this -- you're not</p> <p>7 on this email chain, but this email begins on</p> <p>8 December 10, 2020, from Ms. Hendrix to</p> <p>9 Mr. Romey -- I'm sorry, from Mr. Romey to</p> <p>10 Ms. Hendrix, where he writes (as read):</p> <p>11 Can you tell me the original</p> <p>12 maturity date for the NPA loan</p> <p>13 before it was restructured? Sorry</p> <p>14 for the hustle. Seery is asking</p> <p>15 for this ASAP for today's court</p> <p>16 hearing.</p> <p>17 Do you see that, sir?</p> <p>18 A. I do see it.</p> <p>19 Q. Do you recall asking Mr. Romey</p> <p>20 anything about that loan or anything about</p> <p>21 this on or about January -- December 10,</p> <p>22 2020?</p> <p>23 MR. MORRIS: Objection to the --</p> <p>24 A. Not specifically.</p> <p>25 Q. Okay. It says that you were --</p>	<p style="text-align: right;">Page 151</p> <p>1 J. Seery</p> <p>2 there was a court hearing.</p> <p>3 Do you remember what that court</p> <p>4 hearing might have been?</p> <p>5 A. I -- I don't.</p> <p>6 Q. Okay. Do you have any recollection</p> <p>7 as to why you would have been asking about</p> <p>8 the original maturity date of the NPA loan</p> <p>9 before it was restructured?</p> <p>10 A. I think it's a mistake, that there</p> <p>11 were -- there were five notes --</p> <p>12 Q. Okay.</p> <p>13 A. -- that were rolled into this one.</p> <p>14 I may have just been checking</p> <p>15 whether they were all demand or if any of</p> <p>16 them have had a maturity. I don't -- I don't</p> <p>17 know why I would have been asking for it. I</p> <p>18 don't recall what the hearing was about.</p> <p>19 Q. Fair enough. You testified before</p> <p>20 that -- and I'm not trying to put words in</p> <p>21 your mouth, sir.</p> <p>22 You testified before that there was</p> <p>23 something maybe inappropriate or shady about</p> <p>24 the roll-up of the five notes into the one</p> <p>25 NexPoint note.</p>
<p style="text-align: right;">Page 152</p> <p>1 J. Seery</p> <p>2 Whatever -- whatever words you</p> <p>3 used, was that your speculation as to why it</p> <p>4 happened, was that your logical deduction, or</p> <p>5 did someone tell you that that's why the</p> <p>6 notes were rolled up?</p> <p>7 MR. MORRIS: Objection --</p> <p>8 (Simultaneous speaking.)</p> <p>9 A. -- logical deduction.</p> <p>10 (Reporter clarification.)</p> <p>11 BY MR. RUKAVINA:</p> <p>12 Q. Excluding lawyers, sir, and</p> <p>13 excluding now in litigation, that back</p> <p>14 when -- when the debtor existed and you were</p> <p>15 the CEO/CRO, did you ask anyone at the debtor</p> <p>16 or did you ask Mr. Dondero why those notes</p> <p>17 had been rolled up into the \$30.7 million</p> <p>18 note?</p> <p>19 A. I don't believe I asked</p> <p>20 Mr. Dondero.</p> <p>21 I know I inquired as to whether the</p> <p>22 debtor got anything for the extension of the</p> <p>23 maturity.</p> <p>24 Q. Who did you inquire of?</p> <p>25 A. I don't recall specifically.</p>	<p style="text-align: right;">Page 153</p> <p>1 J. Seery</p> <p>2 Q. Mr. Surgent?</p> <p>3 A. I don't recall specifically. He</p> <p>4 wouldn't, he wouldn't have -- it would either</p> <p>5 have been Frank Waterhouse or someone else in</p> <p>6 accounting; was anything paid? And --</p> <p>7 because there were a number of notes that</p> <p>8 were rolled up in a similar fashion, and it</p> <p>9 all happened around the same thing; a number</p> <p>10 of things were happening to the debtor at</p> <p>11 that time.</p> <p>12 Q. Why did the debtor or the</p> <p>13 reorganized debtor not retain Mr. Waterhouse</p> <p>14 after the termination of the shared services</p> <p>15 agreements?</p> <p>16 A. I didn't need him.</p> <p>17 Q. Okay. Mr. Klos was promoted to</p> <p>18 CFO?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Did you have any personal</p> <p>21 dislike of Mr. Waterhouse ever?</p> <p>22 A. No.</p> <p>23 Q. Did you have any personal views</p> <p>24 that his services as CFO were not up to</p> <p>25 par --</p>

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1 J. Seery
2 MR. MORRIS: Objection --
3 Q. -- not up to what you expected them
4 to be?
5 A. No, I just preferred, for what we
6 were doing, Mr. Klos.
7 Q. Did you ever form the opinion that
8 Mr. Waterhouse was -- I don't know what word
9 to use -- Mr. Dondero's stooge or tentacle?
10 A. No.
11 Q. Okay. Did you have any opinion as
12 to whether he was -- again, I don't know what
13 word to use -- whether he was a responsible,
14 proper CFO when he was the CFO of Highland
15 and you were the CRO?
16 A. While he was CFO, I -- I think he
17 was adequate, but I think the challenge that
18 the employees had at Highland was the pull
19 that Dondero had, the go-betweens that he
20 had.
21 And it's hard to say at a specific
22 time, because I know a lot more now,
23 including to do with payments, including tens
24 of millions of dollars offshore, with respect
25 to Ellington.

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1 J. Seery
2 July of 2020.
3 Q. After you learned about the
4 NexPoint missed December 31, 2020 payment,
5 did you give any instructions to
6 Mr. Waterhouse or anyone else to the effect
7 of don't negotiate any settlement or cure or
8 anything on that default without talking to
9 me first?
10 A. I don't believe that I had any
11 discussion like that with anybody, but it
12 would have been clear, I think, that once the
13 demand letter went out and I had been
14 responsible for initiating it, that the full
15 amount was due, and if anybody wanted to
16 negotiate anything, they would have to do it
17 through me.
18 And certainly no one had the
19 ability to negotiate any monetary settlements
20 with respect to the debtor's assets without
21 talking to me and the board.
22 Q. Okay. Why is that?
23 A. Because we were in bankruptcy and I
24 was the CEO, and I told everybody on the team
25 that they had to come through me. Any

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2 So I -- I know way more now, so
3 it's hard to separate those things. But with
4 respect to Mr. Waterhouse, I think he was --
5 he was adequate. I think the team was very
6 good. And I think that the -- I was always
7 concerned about loyalties.
8 Q. Did you ever, when you were the
9 CRO, discipline, censure, caution
10 Mr. Waterhouse about anything?
11 MR. MORRIS: Objection to the
12 form of the question.
13 A. I actually gave him a raise on his
14 base salary because he couldn't get bonuses
15 because of the Court order structure. I did
16 caution him and many employees about
17 loyalties and their duties to the debtor.
18 Q. And you remember cautioning him
19 specifically about that or as part of larger
20 group?
21 A. As part -- I -- I believe it was
22 part of the larger group. I certainly did it
23 with both legal and accounting, particularly
24 after Judge Jernigan's expressed --
25 expression of concern in -- in and around

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2 material decisions had to go through me.
3 Q. And you told that to
4 Mr. Waterhouse?
5 A. The whole accounting team as well
6 as the legal team.
7 Q. Do you recall if that's in writing
8 anywhere?
9 A. I don't think so.
10 Q. Did you define materiality to them;
11 do you recall?
12 A. I don't think so.
13 Q. Okay. So you never expressly
14 prohibited Mr. Waterhouse from hypothetically
15 accepting any cure to reinstate that note,
16 but you would have expected him to know that
17 he had no authority to do so on behalf of the
18 debtor?
19 A. Oh, I --
20 MR. MORRIS: Object -- objection
21 to the form of the question.
22 A. -- I -- I think it would have been
23 beyond obvious that he had no authority to do
24 that for the debtor.
25 Q. Do you think that would have been

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2 beyond obvious to Mr. Dondero?

3 A. Yes, I do, well --

4 Q. Why --

5 A. -- beyond -- well beyond obvious.

6 Q. Why is that?

7 A. Because the shared services had

8 already been terminated. We were heading

9 towards a confirmation of a monetization

10 plan. He had already failed to pay shared

11 service amounts. He had already been found

12 in contempt of court.

13 The idea that he could cut a deal

14 with a former employee over material asset of

15 the debtor is nonsensical.

16 Q. Okay. Mr. Waterhouse wasn't a

17 former employee on January 12, 2021, was he?

18 A. No, he was not, correct.

19 Q. And although the notice of

20 termination had gone out for the shared

21 services agreement, it had not been

22 terminated as of January 12, 2021, correct?

23 A. That's correct.

24 Are you -- are you implying that --

25 that there was such a deal and you're going

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2 Mr. Seery, allow me just five

3 minutes to consult with my co-counsel. I

4 believe that I'm done, but before I make

5 that decision, I just want to have a few

6 minutes.

7 THE WITNESS: Certainly.

8 VIDEO TECHNICIAN: The time is

9 4:34. We're going off the record.

10 (Recess taken.)

11 VIDEO TECHNICIAN: The time is

12 4:40. We're back on the record.

13 (Brief off-record discussion.)

14 MR. MORRIS: Pass the witness.

15 Mr. Seery, thank you for doing this

16 in person in your beautiful city.

17 THE WITNESS: Thank you. It's

18 coming back, slowly.

19 MS. DEITSCH-PEREZ: Okay. Good

20 afternoon, Mr. Seery.

21 THE WITNESS: Good afternoon.

22 EXAMINATION

23 BY MS. DEITSCH-PEREZ:

24 Q. When Mr. Rukavina started

25 questioning you, and you were describing your

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1 J. Seery

2 to make up a new story?

3 Q. Well, sir, I object to you saying

4 I'm going to make anything up. I'll let

5 Mr. Waterhouse and Mr. Dondero testify as

6 they did.

7 But certainly you would -- you

8 would not be aware of any deal that Frank or

9 James Dondero might have made, right?

10 A. I -- I would not be aware of any

11 such deal.

12 Q. Certainly you would have never,

13 ahead of time or after the fact, authorized

14 any such deal?

15 A. No, I would not.

16 Q. Okay. Why not? Why not accept a

17 cure and reinstate the note?

18 A. Because the full amount of the note

19 was due. We're in a monetization plan. This

20 is an opportunity to monetize an asset.

21 MR. RUKAVINA: Just a moment,

22 please.

23 THE WITNESS: Sure.

24 MR. RUKAVINA: It's 4:30 local,

25 right?

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2 background, you mentioned that you had been

3 involved in hundreds of bankruptcies.

4 Could you tell us, just by listing

5 them, the -- the most substantial companies

6 that you were involved with bankruptcies for?

7 A. United Airlines, TWA, Columbia Gas,

8 Lehman Brothers. It, it -- it's a

9 thirty-year career, so...

10 Q. I'm just asking for the highlights.

11 A. Those aren't bad.

12 Q. Okay. Were there any other

13 financial services companies that you were

14 involved in the bankruptcy or restructuring

15 of?

16 A. Lehman Brothers would be considered

17 a financial services company.

18 Q. Okay. And what kind of company

19 would you consider Highland?

20 A. Highland is a financial advisor.

21 Q. Okay. Were there any other

22 financial advisors that you were involved in

23 the restructuring or bankruptcy of?

24 A. I guess technically MF Global, in

25 some of its places, would fall into that

<p style="text-align: right;">Page 162</p> <p>1 J. Seery</p> <p>2 category. Madoff would fall into that</p> <p>3 category.</p> <p>4 Q. Any others?</p> <p>5 A. There may be. Off the top of my</p> <p>6 head, I don't recall.</p> <p>7 Q. Okay. And in the course of those</p> <p>8 engagements, were you generally aware of the</p> <p>9 top-level executive compensation for the</p> <p>10 top-level executives prior to the -- the</p> <p>11 bankruptcies?</p> <p>12 A. Not specifically. It just depends</p> <p>13 on each -- each company.</p> <p>14 Q. Generally, were you -- were you</p> <p>15 aware? Is that the kind of thing you took</p> <p>16 note of?</p> <p>17 A. Not -- it -- I was more concerned</p> <p>18 with the particular issue that I was dealing</p> <p>19 with as opposed to whether somebody -- what</p> <p>20 somebody made.</p> <p>21 Q. In the bankruptcies that you were</p> <p>22 involved with, with the -- with the larger</p> <p>23 companies and all of the financial services</p> <p>24 or financial advisory companies, can you --</p> <p>25 can you tell me generally the range of</p>	<p style="text-align: right;">Page 163</p> <p>1 J. Seery</p> <p>2 compensation for the CEOs --</p> <p>3 A. I, I --</p> <p>4 (Simultaneous speaking.)</p> <p>5 A. -- no, I wouldn't be able to tell</p> <p>6 you that.</p> <p>7 Q. Even a ballpark you couldn't --</p> <p>8 couldn't say?</p> <p>9 A. They're all different kinds of</p> <p>10 companies.</p> <p>11 Q. I understand, but can you -- for</p> <p>12 any of those companies, can you give me a</p> <p>13 ballpark of what the compensation was?</p> <p>14 A. It could be anywhere in any</p> <p>15 particular year from zero to \$25 million.</p> <p>16 Q. Okay. And is there a general</p> <p>17 pattern that founder CEOs have higher</p> <p>18 compensation than hired-off-the-street CEOs?</p> <p>19 MR. MORRIS: Objection to the</p> <p>20 form of the question.</p> <p>21 A. No, there's not. In fact, it could</p> <p>22 sometimes go the other way.</p> <p>23 Q. But -- but is it sometimes the</p> <p>24 case, in your experience, that founder CEO</p> <p>25 compensation is on the high end?</p>
<p style="text-align: right;">Page 164</p> <p>1 J. Seery</p> <p>2 MR. MORRIS: Objection to the</p> <p>3 form of the question.</p> <p>4 A. I, I -- I don't have any basis to</p> <p>5 say that. It really depends upon the company</p> <p>6 and it depends on the performance of the</p> <p>7 company. Just because you founded something</p> <p>8 and you sit on a log doesn't mean you get</p> <p>9 paid a lot of money.</p> <p>10 Q. Do you know what the CEO</p> <p>11 compensation was for the CEO of Lehman prior</p> <p>12 to the bankruptcy?</p> <p>13 A. In which year?</p> <p>14 Q. The, the year prior -- the years</p> <p>15 prior to the bankruptcy.</p> <p>16 A. I -- I don't know.</p> <p>17 Q. Does it -- does it refresh your</p> <p>18 recollection that it was in the range of</p> <p>19 \$70 million?</p> <p>20 A. There's no chance it was in the</p> <p>21 range of \$70 million. He would have gotten</p> <p>22 stock awards and it would depend on what</p> <p>23 those were worth.</p> <p>24 (Simultaneous speaking.)</p> <p>25 A. Obviously -- obviously, they ended</p>	<p style="text-align: right;">Page 165</p> <p>1 J. Seery</p> <p>2 up being worth -- I think the number is -- I</p> <p>3 think it's zero.</p> <p>4 You're aware of that, correct?</p> <p>5 Q. Prior to the bankruptcy.</p> <p>6 A. Oh, prior to it being worth zero,</p> <p>7 it -- it was worth a lot more.</p> <p>8 Q. But as you sit here today, you</p> <p>9 don't know what any of the CEOs of the</p> <p>10 companies you advised made --</p> <p>11 MR. MORRIS: Objection --</p> <p>12 Q. -- that's what you're telling us?</p> <p>13 MR. MORRIS: Objection to the</p> <p>14 form of the question.</p> <p>15 A. I didn't say I advised those</p> <p>16 companies.</p> <p>17 MR. MORRIS: Thank you.</p> <p>18 Q. But you were involved in the -- in</p> <p>19 the bankruptcy or reorganization --</p> <p>20 A. No --</p> <p>21 (Simultaneous speaking.)</p> <p>22 A. -- I -- I don't have at my</p> <p>23 fingertips the amount that the CEOs of</p> <p>24 various companies made in various industries</p> <p>25 over the last thirty years.</p>

<p style="text-align: right;">Page 166</p> <p>1 J. Seery</p> <p>2 Q. And -- and not even in a general</p> <p>3 way, other than zero to 25 million?</p> <p>4 A. That's a pretty good range.</p> <p>5 Q. Okay. Do you have an understanding</p> <p>6 of what the typical compensation is -- for a</p> <p>7 financial advisory CEO is for a company that</p> <p>8 has a billion or more under management?</p> <p>9 A. It depends on the type of assets</p> <p>10 that are under management, it tends -- it</p> <p>11 depends on the performance of the assets and</p> <p>12 it depends on the cost structure of the</p> <p>13 business.</p> <p>14 Q. And taking those things into</p> <p>15 account, can you describe for us what the</p> <p>16 compensation for a CEO of a financial advisor</p> <p>17 firm is, where there are assets under</p> <p>18 management of a billion or more?</p> <p>19 A. When you [mean] a financial</p> <p>20 advisor, do you mean an FA type firm or do</p> <p>21 you -- financial advisor, or do you mean</p> <p>22 somebody who advises investors?</p> <p>23 Q. I -- I'm talking about a company</p> <p>24 similar to Highland.</p> <p>25 A. So high -- Highland is a -- is a</p>	<p style="text-align: right;">Page 167</p> <p>1 J. Seery</p> <p>2 combination of types of businesses. It's</p> <p>3 basically, in the last five years, at best a</p> <p>4 melting ice cube. It receives certain</p> <p>5 management fees and then it gives away</p> <p>6 services at below cost.</p> <p>7 So Highland was run at a loss.</p> <p>8 Typically people who run businesses that</p> <p>9 operate at an operating loss don't get paid a</p> <p>10 lot of money.</p> <p>11 Q. Let me -- let me ask you, you're</p> <p>12 now -- you've been the CEO of Highland for a</p> <p>13 while, right?</p> <p>14 A. That's correct.</p> <p>15 Q. And you're going to remain the CEO</p> <p>16 for a while longer?</p> <p>17 A. Perhaps.</p> <p>18 Q. And do you have an expectation of</p> <p>19 how many years in total you'll likely be the</p> <p>20 CEO of Highland?</p> <p>21 A. The less the better.</p> <p>22 Q. But aside from that, do you have an</p> <p>23 expectation of how many years you will likely</p> <p>24 be the CEO of Highland?</p> <p>25 A. I don't. I hope we complete the</p>
<p style="text-align: right;">Page 168</p> <p>1 J. Seery</p> <p>2 monetization by 2022. Whether I'm the CEO or</p> <p>3 not that will depend on the oversight board</p> <p>4 and whether I want to continue to do it.</p> <p>5 Q. Okay. And if you are as -- as</p> <p>6 successful as you hope to be, whatever that</p> <p>7 is, how much do you expect to make as the CEO</p> <p>8 of Highland on average for each year that you</p> <p>9 will have been the CEO of Highland?</p> <p>10 MR. MORRIS: Objection to the</p> <p>11 form of the question.</p> <p>12 A. I -- I don't have a particular</p> <p>13 expectation right now. I have to negotiate</p> <p>14 that, but I would expect to make a few</p> <p>15 million dollars a year.</p> <p>16 Q. Have you not negotiated your</p> <p>17 potential contingent compensation yet?</p> <p>18 A. I have not.</p> <p>19 Q. What -- what do you intend to ask</p> <p>20 for?</p> <p>21 MR. MORRIS: Objection to the</p> <p>22 form of the question.</p> <p>23 A. I'd like to get a significant</p> <p>24 amount of money, as much as I can get and</p> <p>25 treat my team fairly, but it has to be fair</p>	<p style="text-align: right;">Page 169</p> <p>1 J. Seery</p> <p>2 based on the returns that we get for the</p> <p>3 investors.</p> <p>4 Q. So based on, if you were as -- as</p> <p>5 successful as you hope to be, what do you</p> <p>6 think that number would be on an annual</p> <p>7 basis?</p> <p>8 (Simultaneous speaking and</p> <p>9 reporter interjection.)</p> <p>10 MR. MORRIS: Objection to the</p> <p>11 form of the question.</p> <p>12 A. I would expect it to be at least a</p> <p>13 few million dollars a year. If I was as</p> <p>14 successful as I think we will be, it should</p> <p>15 be significantly more than that.</p> <p>16 Q. Okay. And so what does -- what</p> <p>17 is -- because I don't know you very well,</p> <p>18 Mr. Seery.</p> <p>19 To you, what is significantly more</p> <p>20 than a few million a year?</p> <p>21 A. Just to be clear, you don't know me</p> <p>22 at all. We've never met, so we'll -- we'll</p> <p>23 make sure that that's clear so we don't --</p> <p>24 there's no implication that there's some</p> <p>25 prior relationship or that we've ever worked</p>

<p style="text-align: right;">Page 170</p> <p>1 J. Seery</p> <p>2 in any matter, in any connection whatsoever</p> <p>3 other than this one.</p> <p>4 Now, your question was?</p> <p>5 MS. DEITSCH-PEREZ: Can you read</p> <p>6 it back?</p> <p>7 (As read by the reporter):</p> <p>8 "QUESTION: And so what does --</p> <p>9 what is -- because I don't know you</p> <p>10 very well, Mr. Seery. To you, what is</p> <p>11 significantly more than a few million a</p> <p>12 year?"</p> <p>13 A. It will depend on -- on the cost.</p> <p>14 It depends on the overall performance, and --</p> <p>15 and that will dictate whether there's upside</p> <p>16 to a performance bonus.</p> <p>17 Q. Is significantly -- let -- let's</p> <p>18 break this down to little pieces.</p> <p>19 A few million, is that two, three,</p> <p>20 four, five? What is a few million?</p> <p>21 A. Typically I think of two as a</p> <p>22 couple, three as a few.</p> <p>23 Q. Okay. Is four also a few?</p> <p>24 A. Four is a little more than a few,</p> <p>25 but it could be in that neighborhood.</p>	<p style="text-align: right;">Page 171</p> <p>1 J. Seery</p> <p>2 Q. Okay. So what is significantly</p> <p>3 more than 3 to 4 million?</p> <p>4 Is that twenty?</p> <p>5 A. That would be --</p> <p>6 MR. MORRIS: Objection --</p> <p>7 (Simultaneous speaking and</p> <p>8 reporter interjection.)</p> <p>9 A. Twenty is significantly more than a</p> <p>10 few, but it's -- it's not any -- there's no</p> <p>11 prospect of \$20 million of a bonus in this</p> <p>12 type of arrangement. There's simply not</p> <p>13 enough assets here.</p> <p>14 Q. Okay. So when you say</p> <p>15 significantly more than a few, do you mean</p> <p>16 something like ten, 10 million a year?</p> <p>17 MR. MORRIS: Objection to the</p> <p>18 form of the question.</p> <p>19 A. Again, I -- I don't have a specific</p> <p>20 number in mind. I think that's -- that</p> <p>21 there's no chance of that either.</p> <p>22 Q. So can you tell me what you mean by</p> <p>23 significantly more than a few million?</p> <p>24 A. Five is significantly more than</p> <p>25 three.</p>
<p style="text-align: right;">Page 172</p> <p>1 J. Seery</p> <p>2 Q. Okay. Does that mean you're hoping</p> <p>3 for compensation of 8 million a year or</p> <p>4 5 million a year, just so I understand you?</p> <p>5 MR. MORRIS: Objection to the</p> <p>6 form of the question. Come on.</p> <p>7 A. There's no chance of \$8 million a</p> <p>8 year here. There's not enough assets.</p> <p>9 There's not enough value in the estate to pay</p> <p>10 anybody that amount, which is why Highland</p> <p>11 would never pay anybody that amount anyway,</p> <p>12 because when you have a melting ice cube and</p> <p>13 you don't get any performance fees because</p> <p>14 your performance is terrible, you don't pay</p> <p>15 somebody that much money.</p> <p>16 MO* MS. DEITSCH-PEREZ: Move to</p> <p>17 strike.</p> <p>18 Q. In your experience with the various</p> <p>19 companies you've mentioned, have you seen</p> <p>20 executives given loans as part of their</p> <p>21 executive compensation?</p> <p>22 A. You know, I don't --</p> <p>23 MR. MORRIS: Objection to the</p> <p>24 form of the question.</p> <p>25 A. I don't know. I don't -- I don't</p>	<p style="text-align: right;">Page 173</p> <p>1 J. Seery</p> <p>2 recall. I've certainly seen loans be given</p> <p>3 as part of compensation.</p> <p>4 Typically senior executives, in my</p> <p>5 experience, don't get loans because loans</p> <p>6 either have to be paid back or structured in</p> <p>7 an odd way.</p> <p>8 If they're structured just to avoid</p> <p>9 taxes, most legitimate companies don't want</p> <p>10 to do that, so most companies will either pay</p> <p>11 somebody a -- a base salary and deferred</p> <p>12 amounts or will pay them with stock.</p> <p>13 Q. But you have seen loans given as</p> <p>14 part of compensation?</p> <p>15 A. I -- I don't think I've seen it. I</p> <p>16 know that it exists. I -- I don't recall any</p> <p>17 senior executives in any companies that I've</p> <p>18 worked around where a loan to a senior</p> <p>19 executive was a -- was a material issue in a</p> <p>20 case.</p> <p>21 Q. Have you also seen circumstances</p> <p>22 where executives or just high-level employees</p> <p>23 are given loans that are eventually forgiven</p> <p>24 as part of their compensation?</p> <p>25 A. I -- I know it exists. Again, I</p>

<p style="text-align: right;">Page 174</p> <p>1 J. Seery</p> <p>2 don't think it's been something or -- or</p> <p>3 characteristic in any case either that I've</p> <p>4 been involved with, invested in, worked on.</p> <p>5 Q. Given the nature of your work in</p> <p>6 bankruptcies, does that simply mean that the</p> <p>7 issue of loans and the forgiveness of the</p> <p>8 loans has not been materially challenged in</p> <p>9 the various engagements that you've</p> <p>10 undertaken?</p> <p>11 A. No, I don't think -- I think it's</p> <p>12 because it's not a material issue, and so you</p> <p>13 don't -- you don't see very many companies</p> <p>14 that I have been around where significant</p> <p>15 amounts of the assets are company --</p> <p>16 intercompany related loans or -- or loans to</p> <p>17 the senior executives, where it's all</p> <p>18 controlled by the same executive. It's a --</p> <p>19 Q. Have you --</p> <p>20 A. -- it's a rare item.</p> <p>21 Q. Have you made any investigation, as</p> <p>22 part of your role in this case, into whether</p> <p>23 there are other companies that -- that have</p> <p>24 similar loan programs, where executives or</p> <p>25 senior officers receive loans that have the</p>	<p style="text-align: right;">Page 175</p> <p>1 J. Seery</p> <p>2 potential to be forgiven?</p> <p>3 MR. MORRIS: Objection to the</p> <p>4 form of the question.</p> <p>5 A. Yeah, again, I don't -- I don't --</p> <p>6 I don't think there's a program involved in</p> <p>7 this situation, and I don't think there's any</p> <p>8 potential for loans to be forgiven, so I --</p> <p>9 it's not something that I've seen elsewhere,</p> <p>10 although forgivable loans can be used for</p> <p>11 certain types of compensation to employees to</p> <p>12 retain them, certainly would be -- be</p> <p>13 humorous to do that with respect to a</p> <p>14 founder, but I don't -- in my experience, I</p> <p>15 haven't seen this as a -- as a material issue</p> <p>16 like it is in this case.</p> <p>17 Q. And I was asking whether you had</p> <p>18 investigated, so that you could -- currently,</p> <p>19 whether or not there are other companies in</p> <p>20 which there was a practice like the one you</p> <p>21 just described.</p> <p>22 MR. MORRIS: Objection, asked and</p> <p>23 answered.</p> <p>24 A. I haven't done any other</p> <p>25 investigation, other than -- than my</p>
<p style="text-align: right;">Page 176</p> <p>1 J. Seery</p> <p>2 experience.</p> <p>3 Q. Okay. Did you investigate whether</p> <p>4 or not any of the following people - mike</p> <p>5 Hurley, Tim Lawlor, Pat Daugherty, Jack Yang,</p> <p>6 Paul Adkins, Labraya Mamoud [ph], Jean Luc</p> <p>7 Everland [ph] or Appou Landoseri [ph]</p> <p>8 received loans that were potentially</p> <p>9 forgivable and then that were, in whole or in</p> <p>10 part, forgiven?</p> <p>11 MR. MORRIS: Objection to the</p> <p>12 form of the question.</p> <p>13 A. I have looked at that, yes.</p> <p>14 Q. Okay. And what did you determine?</p> <p>15 A. I determined that Highland, I don't</p> <p>16 believe, has made a loan to any employee</p> <p>17 other than Okada and Dondero in about twelve</p> <p>18 years; that no loans were forgiven, notes --</p> <p>19 so they were -- actually, I don't believe</p> <p>20 they got any before 2014, maybe '13.</p> <p>21 No senior executive got it except</p> <p>22 with respect to Yang, but he was employed by</p> <p>23 New York, not by HCMLP. That was part --</p> <p>24 effectively, was part of a severance when he</p> <p>25 left. And I don't think there's been any</p>	<p style="text-align: right;">Page 177</p> <p>1 J. Seery</p> <p>2 that have been north of \$500,000, so nothing</p> <p>3 like this.</p> <p>4 And I did determine that Okada's --</p> <p>5 I believe he only had one loan. I could be</p> <p>6 wrong on that, but that's the only one I</p> <p>7 recollect, and he paid it back.</p> <p>8 Q. And did he pay it back in</p> <p>9 connection with this bankruptcy, a demand of</p> <p>10 the bankruptcy?</p> <p>11 A. He did, yes.</p> <p>12 Q. Under threat of lawsuit?</p> <p>13 A. No. I spoke to Mark and I said you</p> <p>14 should go talk to your counsel, you have a</p> <p>15 very good counsel, Sullivan & Cromwell.</p> <p>16 He went and talked to them and he</p> <p>17 said you're right, they said I have to pay it</p> <p>18 back. And he did, and we structured it.</p> <p>19 Q. So did you determine that the --</p> <p>20 you mentioned Yang.</p> <p>21 But the others that I listed, did</p> <p>22 you determine whether they had or had not</p> <p>23 received loans that had been forgiven in</p> <p>24 whole or in part?</p> <p>25 A. It looks like they had, and that</p>

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1 J. Seery
2 was about more than ten or twelve years ago
3 and it had not been done since. None of
4 those were obviously a founder, none of them
5 were more than \$500,000.
6 Q. Okay. And did you learn that all
7 of the notes that existed in relation to
8 those loans for the people that I listed --
9 none of the notes actually contained the
10 forgiveness term?
11 MR. MORRIS: Objection to the
12 form of the question.
13 A. I -- I do not know that, no.
14 Q. Well, did you search for the notes
15 at issue?
16 A. I did not look at the notes, I just
17 looked at the dollar amounts.
18 Q. Did you talk to anyone who had been
19 involved in the -- the issuance of the notes
20 to the people that I listed that were
21 eventually forgiven?
22 A. No.
23 Q. Okay. Are -- are you aware that
24 it's generally the case, when companies use
25 potentially forgivable loans as a part of

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1 J. Seery
2 certain --
3 MR. MORRIS: Objection to the
4 form.
5 Q. -- doesn't that -- does -- in your
6 understanding, isn't that a -- a loan that,
7 until it's forgiven, is a bona fide loan of
8 which no taxes are owed?
9 MR. MORRIS: Objection to the
10 form of the question.
11 A. I think you've described -- I
12 apologize.
13 I think you've described what I'd
14 call a scam.
15 Q. Let's step -- step back a second,
16 Mr. Seery.
17 If I use the term "tax efficient
18 transaction," what do you understand that to
19 mean?
20 MR. MORRIS: Objection to the --
21 (Simultaneous speaking.)
22 Q. -- something is tax efficient, what
23 does that mean to you, so I just make sure
24 we're -- we're talking the same language?
25 MR. MORRIS: Objection to the

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1 J. Seery
2 compensation, that the notes are bona fide
3 notes from the start that don't have a
4 forgiveness term and that the forgiveness
5 term, for tax purposes, is subsequent and
6 that taxes then are only paid when the note
7 is actually forgiven?
8 MR. MORRIS: Objection to the
9 form of the question.
10 A. My experience and understanding of
11 that is actually different. When an employee
12 receives a forgivable loan as part of either
13 their retention, and often it happens as a --
14 a way to either retain somebody or to employ
15 someone, that it's very clear that it's
16 forgivable up front. Otherwise, it would be
17 a trust-me loan.
18 Now, certainly the founder who
19 controls everything can make his own trust-me
20 loan because he can trust himself, but -- but
21 to structure it to avoid taxes, my experience
22 is that that's actually illegal.
23 Q. If you make payments on the loan
24 and it's only forgivable if certain
25 conditions occur in the future that are not

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1 J. Seery
2 form of the question.
3 A. It -- it means a transaction
4 that's -- that's structured in a way to
5 minimize the -- the tax cost.
6 Q. Okay. And is your impression of
7 Mr. Dondero that, if he has a choice between
8 doing a transaction in a tax efficient way
9 and a non-tax efficient way, that he would
10 pick the tax efficient way?
11 A. I believe he would, yes.
12 Q. Okay. And are you condemning of
13 that --
14 A. No.
15 Q. -- is it a bad thing?
16 A. Tax -- tax avoidance is a --
17 Q. Taxi efficiency.
18 A. I said tax avoidance is a duty,
19 taxi evasion is a crime.
20 Q. Okay. So when you say "duty," what
21 do you mean?
22 Remember, a jury is listening to
23 this so I want it to be clear.
24 A. I believe --
25 MR. MORRIS: That's not entirely

<p style="text-align: right;">Page 182</p> <p>1 J. Seery</p> <p>2 clear, just to be -- just to be</p> <p>3 certain. You may never get to a jury,</p> <p>4 but go ahead.</p> <p>5 A. I don't recall if that was a -- a</p> <p>6 quote from Learned Hand or one of the other</p> <p>7 well known --</p> <p>8 Q. It had that sound to you?</p> <p>9 A. -- judges, but I -- I think that</p> <p>10 structuring a transaction that has legitimate</p> <p>11 purposes in a tax efficient way is not</p> <p>12 necessarily problematic.</p> <p>13 Structuring a transaction to avoid</p> <p>14 taxes, and -- and mainly or solely to avoid</p> <p>15 taxes, is actually a -- a violation of the</p> <p>16 Internal Revenue Code.</p> <p>17 Q. And looking at the various loans to</p> <p>18 Mr. Dondero and the related company loans</p> <p>19 that are the subject of the notes litigation</p> <p>20 that you are here today to testify about, was</p> <p>21 it the case that annual payments both on the</p> <p>22 term loans and interest payments on the</p> <p>23 demand loans were made?</p> <p>24 A. Oftentimes, yes.</p> <p>25 Q. Okay. And is that a characteristic</p>	<p style="text-align: right;">Page 183</p> <p>1 J. Seery</p> <p>2 of a bona fide loan, that --</p> <p>3 MR. MORRIS: Objection to the</p> <p>4 form of the question.</p> <p>5 (Technical disruption.)</p> <p>6 Q. -- later, but as long as that</p> <p>7 hasn't happened, interest payments should be</p> <p>8 made, and if it's a --</p> <p>9 MR. RUKAVINA: We lost you,</p> <p>10 Deborah. Deborah, we lost you.</p> <p>11 MS. DEITSCH-PEREZ: Can you --</p> <p>12 did you hear me?</p> <p>13 MR. RUKAVINA: No.</p> <p>14 MS. DEITSCH-PEREZ: Okay. I'll,</p> <p>15 I'll -- I'll start over then.</p> <p>16 Q. In your experience, is it a</p> <p>17 characteristic of a bona fide loan, whether</p> <p>18 demand or a term loan, that until it is</p> <p>19 actually forgiven -- until and unless it is</p> <p>20 forgiven, that annual interest payments</p> <p>21 should be made on a demand loan, and whatever</p> <p>22 is due pursuant to the terms of the note on</p> <p>23 the term loan should also be made annually?</p> <p>24 MR. MORRIS: Objection to the</p> <p>25 form of the question.</p>
<p style="text-align: right;">Page 184</p> <p>1 J. Seery</p> <p>2 A. I -- I think that's a</p> <p>3 characteristic of a bona fide loan, but I</p> <p>4 think that you can have an accruing loan that</p> <p>5 doesn't have those payments that is also a</p> <p>6 bona fide loan. And so I -- I do think these</p> <p>7 are bona fide loans. The money was given, a</p> <p>8 note was signed, the amounts are owed.</p> <p>9 Q. And do you have a reason to believe</p> <p>10 that if it was in Mr. Dondero's power to</p> <p>11 attempt to have these loans subject to a</p> <p>12 condition under which there would be</p> <p>13 forgiveness of the loan, is that something</p> <p>14 that is -- that surprises you?</p> <p>15 MR. MORRIS: Objection to the</p> <p>16 form of the question.</p> <p>17 A. It -- it shocks me.</p> <p>18 Q. So you don't think that if</p> <p>19 Mr. Dondero had the opportunity to -- to have</p> <p>20 contingent compensation rather than</p> <p>21 compensation in 2017, 2018 or '19, but move</p> <p>22 it out into the future, it surprises you</p> <p>23 that -- that he would want to do that?</p> <p>24 MR. MORRIS: Objection to the</p> <p>25 form of the question.</p>	<p style="text-align: right;">Page 185</p> <p>1 J. Seery</p> <p>2 A. Can -- can you read that question</p> <p>3 back --</p> <p>4 (Simultaneous speaking.)</p> <p>5 A. -- I didn't understand it.</p> <p>6 MS. DEITSCH-PEREZ: The court</p> <p>7 reporter can read it back.</p> <p>8 (As read by the reporter):</p> <p>9 "QUESTION: So you don't think</p> <p>10 that if Mr. Dondero had the opportunity</p> <p>11 to have contingent compensation rather</p> <p>12 than compensation in 2017, 2018 or '19,</p> <p>13 but move it out into the future, it</p> <p>14 surprises you that -- that he would</p> <p>15 want to do that?"</p> <p>16 MR. MORRIS: Objection to the</p> <p>17 form of the question.</p> <p>18 A. I -- I don't see any evidence</p> <p>19 whatsoever that that's what he did. And in</p> <p>20 fact, the way the business was run and the</p> <p>21 monies he took out from various different</p> <p>22 places connected to the business shows that</p> <p>23 that wasn't the case.</p> <p>24 MO* MS. DEITSCH-PEREZ: Move to strike</p> <p>25 because you didn't answer --</p>

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1 J. Seery

2 MR. MORRIS: And, and -- and I --

3 and I object, you asked him if -- I

4 just -- I, I --

5 MS. DEITSCH-PEREZ: Well, John --

6 MR. MORRIS: -- it's not -- the

7 judge will rule.

8 Go ahead.

9 BY MS. DEITSCH-PEREZ:

10 Q. You've heard of -- Highland has

11 interests in Cornerstone, Trussway and MGM,

12 that's correct?

13 MR. MORRIS: Objection to the

14 form of the question.

15 A. You should be precise. Highland

16 owns certain equity interests in Cornerstone,

17 approximately 4 percent. Highland owns,

18 indirectly, all of the interests -- almost

19 all of the interests in Trussway. Highland

20 owns a small piece of MGM.

21 Q. Okay. And have you made any

22 inquiry into whether employees at Highland

23 referred to these colloquially as portfolio

24 companies?

25 A. I --

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1 J. Seery

2 Cornerstone, Trussway and MGM?

3 MR. MORRIS: Objection to the

4 form of the question.

5 A. I don't recall him ever talking to

6 me very much about Cornerstone and potential

7 upside or Trussway.

8 He did have high hopes, or

9 expressed high hopes, of upside value in MGM.

10 But at the same time, he sold 1.7 million

11 shares after the filing for 7250. So that

12 sort of belied that optimism, but he

13 expressed some optimism that MGM would have

14 upside. And of course he sat on the board,

15 so he'd have some insight into it.

16 Q. And it looks like, hopefully, he

17 was right to -- in that optimism?

18 MR. MORRIS: Objection to the

19 form of the question.

20 Q. Is that right?

21 A. We'll find out.

22 Q. So far it appears that his optimism

23 may be justified; is that right?

24 A. There's -- there's a transaction.

25 It's subject to approval and closure.

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1 J. Seery

2 MR. MORRIS: Object --

3 A. I -- I know that cornerstone is

4 sometimes referred to as a portfolio company.

5 I know that Trussway is referred to as a

6 portfolio company.

7 It would be -- I've never heard

8 anyone refer to as -- MGM as a portfolio

9 company.

10 Q. Have you ever made an inquiry as to

11 whether sometimes it was colloquially called

12 a portfolio company?

13 A. I -- I haven't made an inquiry as

14 to it, no. I've been around the business for

15 a year-and-a-half, nineteen months.

16 Q. Have you ever heard Mr. Dondero

17 refer to MGM as one of the portfolio

18 companies?

19 A. No, I haven't. It would be very

20 odd if he would.

21 Q. When you -- in the early days, when

22 you communicated with Mr. Dondero about the

23 prospects for the assets at Highland, did he

24 appear to have high hopes for the

25 monetization and increase in value of

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1 J. Seery

2 Q. Okay.

3 A. Certainly hope so.

4 Q. If in fact all three of those

5 companies, MGM -- or Highland's interest in

6 those three companies are successfully

7 monetized, will the assets of Highland exceed

8 its liabilities?

9 MR. MORRIS: Objection to the

10 form of the question.

11 A. Extremely unlikely.

12 Q. Possible though?

13 MR. MORRIS: Objection to the

14 form of the question.

15 Q. In your educated opinion --

16 (Simultaneous speaking.)

17 A. Can I -- can I answer your

18 question --

19 Q. Yes.

20 A. -- unless "possible though" is just

21 a quip, because then I won't answer it.

22 Q. No --

23 A. Is that a question?

24 Q. -- it's not a quip --

25 A. Oh, okay.

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1 J. Seery

2 Q. -- it is a question.

3 A. It's -- we know what the -- at

4 least now what the potential upside is to

5 MGM. We don't know what the upside is for

6 Cornerstone or Trussway, but we understand

7 the performance of the companies and the

8 framework with which somebody would value

9 them.

10 So it would be extremely unlikely,

11 not impossible but extremely unlikely, for

12 those two companies - with MGM capped - to

13 have a performance that exceeded the total

14 amount of claims.

15 Q. How close a matter is it?

16 MR. MORRIS: Objection --

17 (Simultaneous speaking and

18 reporter interjection.)

19 Q. How -- how close -- how close --

20 let me -- let me strike that and start again.

21 What would MGM, Trussway and

22 Cornerstone need to be monetized for in order

23 for the overall assets of Highland to exceed

24 its liabilities?

25 MR. MORRIS: Objection to the

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1 J. Seery

2 for the moment the potential value of the MGM

3 transaction, what do you think the assets of

4 Highland are likely to be worth?

5 MR. MORRIS: Objection to the

6 form of the question.

7 A. I -- I don't know. Part of it

8 depends on -- again, it's the costs. It's

9 collection of \$63 million notes in these

10 litigations, and then it's the ultimate value

11 of those assets.

12 But I would hope that we would be

13 very successful in the asset monetization,

14 where we would be able to get at least

15 \$300 million with those -- those assets and

16 others.

17 Q. Do you think that if you're as

18 successful as you hope to be, that the assets

19 will be worth more than 400 million net of

20 the collection costs?

21 A. I --

22 MR. MORRIS: Objection to the

23 form of the question.

24 A. I believe I already said I believe

25 that's unlikely, but I'm an optimistic

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1 J. Seery

2 form of the question.

3 A. I'm not in a position to answer

4 that, but all of the assets minus the

5 expenses to get there would need to exceed

6 \$400 million.

7 Q. And right now, what do you think

8 the assets are worth?

9 MR. MORRIS: Objection to the

10 form of the question.

11 A. Again, I don't -- I know what MGM

12 is potentially worth, but it's hard to -- I

13 can't count that until it's done.

14 Q. I know but --

15 (Simultaneous speaking.)

16 MR. MORRIS: Let him finish,

17 please let him finish.

18 A. You don't -- can't count that until

19 it's done. And then the other -- the other

20 businesses we have to put through a process,

21 to see what they're worth. And they're,

22 they're, they're -- they've got potential

23 upside but they have challenges as well.

24 Q. Okay. Assuming you are as

25 successful as you hope to be, and crediting

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1 J. Seery

2 fellow.

3 Q. So then you hope it is likely?

4 A. I certainly hope so.

5 And, again, that -- that hope

6 counts on \$63 million of note collections

7 that I do expect to collect.

8 MR. MORRIS: Deborah?

9 MS. DEITSCH-PEREZ: Yes.

10 MR. MORRIS: I apologize for

11 interrupting, but sometime between now

12 and 6:00 I'm going to have to take

13 about a ten or a twelve-minute break.

14 I have no idea how much you have.

15 If you're going to finish in twenty

16 minutes, then let's do that. If you're

17 going to take more than an hour, I

18 just -- just please stop at some point

19 by, you know, 5:30, 5:35, so I can take

20 that break.

21 I just have to attend to something

22 that -- it won't take too long, but I

23 just wanted to let you know that so you

24 weren't surprised.

25 MS. DEITSCH-PEREZ: Okay. If

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1 J. Seery
2 you're okay, let me do one more segment
3 and then I'll let you -- I'll excuse
4 you to -- to do your errands and we'll
5 come back?
6 MR. MORRIS: Sure.
7 (Brief off-record discussion.)
8 MS. DEITSCH-PEREZ: He needs --
9 he needs his ten or twelve minutes
10 before 6:00 --
11 THE WITNESS: Got it, got it.
12 MS. DEITSCH-PEREZ: -- is that
13 right?
14 MR. MORRIS: Yep.
15 BY MS. DEITSCH-PEREZ:
16 Q. Okay. When Mr. Rukavina was
17 questioning you, he was questioning you about
18 the nonpayment of the NexPoint Advisors loan.
19 Remember that?
20 And you -- were you only talking
21 about NexPoint, that -- that loan not the
22 HCMS term loan and not the HCRE term loan?
23 A. He was only asking me about the
24 NexPoint, as I understood it.
25 Q. Okay. So let me ask you, are you

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1 J. Seery
2 they were accelerated for each of those
3 loans, similar to the situation with the NPA
4 loan.
5 Q. Let me show you - hang on, let me
6 pull it up - what I have marked as -- I
7 marked it as exhibit -- premarked it as
8 Exhibit 111, just to make sure I cleared
9 Mr. Rukavina's exhibits. But it's an
10 arbitrary number, we're not missing 100-odd
11 exhibits.
12 Okay. Can you see the exhibit?
13 And I did email it to Mr. Morris
14 prior to the deposition. Do you have it
15 there?
16 MR. MORRIS: No, I didn't see
17 your email.
18 A. I see it on the screen.
19 Q. Okay. You have them in your email.
20 If there are any of them that you need to
21 break for a moment and have the exhibits
22 printed so that you can look at the whole
23 thing, please let me know and we can stop,
24 okay?
25 So have you seen what I've marked

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1 J. Seery
2 aware that there were what -- at issue in
3 these litigations, a term loan between
4 Highland and HCMS?
5 A. Yes.
6 Q. And a term loan between Highland
7 and HCRE?
8 A. Yes.
9 Q. Okay. And when was the last
10 payment due on the HCMS term loan and the
11 HCRE term loan?
12 MR. MORRIS: Objection to the
13 form of the question.
14 A. I -- I don't recall exactly. I
15 thought they were -- they were all in and
16 around the same time. If they weren't the
17 31st, they were right there.
18 Q. All right. And were the annual
19 payments for the HCMS and HCRE term loans
20 made by December 31, 2020?
21 A. They were not.
22 Q. And were the annual -- and was a
23 payment made on each of those loans in
24 January of 2021?
25 A. I believe a payment was made after

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1 J. Seery
2 as Exhibit 111 before?
3 A. I believe I have.
4 Q. Okay. And did you cause the letter
5 to be sent out?
6 A. I did, yes.
7 Q. And did you write the letter?
8 A. I don't believe I wrote it. I
9 would have marked it up to some degree.
10 Q. Who wrote Exhibit 111, which is the
11 letter to Mr. Dondero from you, dated
12 January 7, entitled "Demand on Promissory
13 Note"?
14 MR. MORRIS: Objection to the
15 form of the question.
16 A. My counsel.
17 Q. Okay. Do you know in particular
18 who wrote it?
19 DI* MR. MORRIS: I'm going to direct
20 the witness not to answer.
21 MS. DEITSCH-PEREZ: Just he can
22 answer that, whether he knows who wrote
23 it?
24 MR. MORRIS: Sure, he can answer
25 that question.

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1 J. Seery

2 A. Yes, I know.

3 Q. Okay. And can you tell me who

4 wrote it?

5 MR. MORRIS: No.

6 Q. And that's because your counsel has

7 directed you not to answer --

8 MR. MORRIS: That's right.

9 Q. -- or because you don't know?

10 MR. MORRIS: It's because I'm

11 directing him not to answer. We're not

12 going to even find out whether he knows

13 or not because it's privileged.

14 Q. Okay. Is this the only letter that

15 you caused to be sent to Highland Capital

16 Management Services with regard to the term

17 loan in the original principal amount of

18 20,247,628?

19 A. I don't recall. I would expect

20 there to have been a follow-up letter as

21 well, but I don't recall specifically.

22 Perhaps you have it.

23 Q. I do not. That's why I'm asking, I

24 don't see a letter like the one that we saw

25 earlier that was to NexPoint.

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1 J. Seery

2 the case?

3 A. If there was, it would have --

4 similar to the NPA, it would have been

5 applied on account.

6 Q. Other than the letter that's been

7 marked as Exhibit 111, did you have any

8 communications with anyone at Highland

9 Capital Management Services about the note or

10 the payment or the nonpayment other than this

11 possible post-payment letter and the -- that

12 was similar to the NexPoint one that we

13 looked at earlier?

14 MR. MORRIS: Objection to the

15 form of the question.

16 A. I would only have communicated

17 through the demands.

18 Q. Okay. So just to make it very

19 clear, did you talk with Mr. Dondero about

20 the HCMS note payment, nonpayment or status

21 of the -- of the demand?

22 A. No.

23 Q. And did you talk with

24 Mr. Waterhouse about the note, the payment,

25 the nonpayment or the status of the demand?

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1 J. Seery

2 A. I don't recall specifically; I

3 would have to look. If we had it, we would

4 have produced it.

5 Q. Okay. And if you had it, would you

6 also have attached it to the complaint --

7 MR. MORRIS: Objection to the

8 form --

9 Q. -- the way the NexPoint letter was

10 attached to the complaint?

11 MR. MORRIS: Objection to the

12 form of the question.

13 A. I -- I don't know if we would have

14 or not. I think the demand is sufficient on

15 its own.

16 Q. Other than the possibility that

17 there was a -- let me back up.

18 Was there a payment made in January

19 on the HCMS term loan?

20 A. I thought there was, but I don't

21 recall specifically. I'd have to look at

22 the -- it would be in the complaint, I would

23 think.

24 Q. Okay. And if the complaint says

25 there was, then there -- then that would be

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1 J. Seery

2 A. Not that I recall.

3 Q. Okay. What about Ms. Hendrix and

4 Mr. Klos; did you talk with either of them

5 about the note, the nonpayment, the payment

6 or the status of the -- of -- of the loan?

7 A. Do you mean at the time this demand

8 note was sent?

9 Q. Yes, in -- in December of 2020 or

10 January/February of 2021, that time frame.

11 A. Not that I recall specifically, no.

12 Q. And was it your understanding that

13 Highland provided shared services to Highland

14 Capital Management Services?

15 MR. MORRIS: Objection to the

16 form of the question.

17 A. It did not have a shared service

18 arrangement --

19 Q. That wasn't -- wasn't my question.

20 A. I'm answering your question .

21 But lots of free services were

22 given to lots of Dondero entities by lots of

23 Highland employees, who were never paid, over

24 the years.

25 Q. Was it your understanding that

<p style="text-align: right;">Page 202</p> <p>1 J. Seery</p> <p>2 Highland provided shared services to Highland</p> <p>3 Capital Management Services?</p> <p>4 A. No.</p> <p>5 MR. MORRIS: Objection to the</p> <p>6 form --</p> <p>7 A. Sorry.</p> <p>8 MR. MORRIS: -- of the question.</p> <p>9 A. No, shared -- shared services refer</p> <p>10 to a specific agreement. There was no --</p> <p>11 there was no agreement or other arrangement.</p> <p>12 Highland employees did things</p> <p>13 wherever Dondero asked them to do.</p> <p>14 Q. I, I -- I assume, when you say</p> <p>15 there was no agreement, you're talking about</p> <p>16 no formal written agreement like the one</p> <p>17 we've looked at for NexPoint earlier today --</p> <p>18 MR. MORRIS: Objection to --</p> <p>19 Q. -- is that what you're referring</p> <p>20 to?</p> <p>21 MR. MORRIS: Objection to the</p> <p>22 form of the question.</p> <p>23 A. No, I'm referring to any type of</p> <p>24 agreement.</p> <p>25 You, you -- you refer to these</p>	<p style="text-align: right;">Page 203</p> <p>1 J. Seery</p> <p>2 companies as if they're standalone operating</p> <p>3 entities that actually do things. These are</p> <p>4 entries on paper that move money around.</p> <p>5 So when Dondero asks an employee to</p> <p>6 do work on behalf of himself, whether that's</p> <p>7 closing his own house loans, whether that's</p> <p>8 coming over and doing work at his house or</p> <p>9 whether it's working for Highland Capital</p> <p>10 Management Services, they -- they did it and</p> <p>11 Highland was not compensated.</p> <p>12 Q. Have you -- have you investigated</p> <p>13 whether there was effective compensation for</p> <p>14 the services that Highland provided to</p> <p>15 Highland Capital Management Services?</p> <p>16 MR. MORRIS: Objection to the</p> <p>17 form of the question.</p> <p>18 A. I -- I don't know what effective</p> <p>19 compensation means, but I have investigated</p> <p>20 whether Highland Capital Management received</p> <p>21 anything from HCM Services.</p> <p>22 Q. And who did you ask?</p> <p>23 A. It's been part of the ongoing</p> <p>24 review of the business throughout the second</p> <p>25 half of this case and into the spring of this</p>
<p style="text-align: right;">Page 204</p> <p>1 J. Seery</p> <p>2 year.</p> <p>3 Q. And did you determine, in the</p> <p>4 course of that investigation, that there was</p> <p>5 a pattern and practice of Highland providing</p> <p>6 services like the ones in the NexPoint shared</p> <p>7 services agreement to Highland Capital</p> <p>8 Management Services?</p> <p>9 A. I think you asked me if we got some</p> <p>10 sort of -- I think you said either indirect</p> <p>11 or some other form of compensation.</p> <p>12 The answer was no. There were</p> <p>13 things that Highland employees did at</p> <p>14 different times at Mr. Dondero's directions</p> <p>15 for these various entities, none of which</p> <p>16 were paid for.</p> <p>17 Q. Was it generally the case that</p> <p>18 Highland provided the back office services</p> <p>19 for Highland Capital Management Services,</p> <p>20 such as bill paying?</p> <p>21 A. Sometimes. I don't know that it</p> <p>22 was generally the case. It depended. And</p> <p>23 Highland Capital --</p> <p>24 (Simultaneous speaking.)</p> <p>25 A. -- and Highland Capital Management</p>	<p style="text-align: right;">Page 205</p> <p>1 J. Seery</p> <p>2 Services really just owned certain things and</p> <p>3 took money out of Highland.</p> <p>4 The fact of the matter is, Highland</p> <p>5 Capital Services' main business is that it</p> <p>6 gives money to Jim Dondero. I think he owes</p> <p>7 around a hundred million to services.</p> <p>8 MO* MS. DEITSCH-PEREZ: Move to</p> <p>9 strike. That wasn't my question.</p> <p>10 Q. I asked you whether or not you</p> <p>11 noticed, in the course of your various</p> <p>12 investigations, that Highland Capital</p> <p>13 Management provided back office services like</p> <p>14 bill paying for cap -- for Highland Capital</p> <p>15 Management Services?</p> <p>16 A. I --</p> <p>17 MR. MORRIS: Objection to the</p> <p>18 form of the question.</p> <p>19 A. And I -- and I answered that I</p> <p>20 don't think you can think of this company --</p> <p>21 this entity - or company, Highland Capital</p> <p>22 Services Inc. - in that manner.</p> <p>23 It didn't -- it didn't have, for</p> <p>24 example, advisory services that anybody there</p> <p>25 was performing for third parties like NPA.</p>

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1 J. Seery
2 So there wasn't doing work for a fund, et
3 cetera, so I don't -- there were certain
4 things that were done. Whether they were ad
5 hoc or specific, I didn't see any true
6 pattern that this was similar to an agreement
7 where third -- true third-party services were
8 being continually performed.
9 Q. Did Highland Capital Management
10 Services have employees that you knew of?
11 A. No.
12 Q. Okay. So if it wanted to pay a
13 bill, it was using employees at Highland
14 Capital Management to do that, correct?
15 A. If it had a bill, yeah.
16 Q. Okay. And in fact, did -- did
17 Highland Capital Management charge Highland
18 Capital Management Services for shared
19 services?
20 A. I don't believe so.
21 MS. DEITSCH-PEREZ: Let me show
22 you another document that I'll -- has
23 been premarked as Exhibit 110.
24 MR. MORRIS: Are we going to be
25 able to take that break shortly?

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1 J. Seery
2 Do you recall Exhibit 110?
3 A. Not specifically, no.
4 Q. Do you generally -- well, first,
5 who's Fred Caruso?
6 A. He is a partner at DSI.
7 Q. Okay. And were Brian -- and who
8 are Brian Collins, JP Sevilla -- the other --
9 the others we've spoken about.
10 So who are Collins and Sevilla?
11 A. Brian Collins -- at this time
12 Collins, I believe, was still head of HR at
13 HCMLP and Sevilla was a counsel at HCMLP, but
14 they were really working for the transition,
15 which I don't know if it had a name at that
16 point, whether it was Highgate or Skyview.
17 But that's what they were working
18 on, and this had to do with transition of the
19 business, the service part of the business,
20 from Highland to other entities.
21 Q. But am I correct that this is a
22 demand from HCMLP to the companies listed in
23 Exhibit 110 for money?
24 A. It looks to be that, yes.
25 Q. Okay. And the email says there are

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1 J. Seery
2 MS. DEITSCH-PEREZ: If you want
3 to take it now, that's fine.
4 MR. MORRIS: Yeah, I would
5 appreciate it.
6 MS. DEITSCH-PEREZ: Well,
7 actually, why don't -- if you don't
8 mind, let me just finish 110.
9 MR. MORRIS: Okay.
10 MS. DEITSCH-PEREZ: I think that
11 will be pretty quick and then --
12 MR. MORRIS: Okay.
13 MS. DEITSCH-PEREZ: -- then we
14 can break.
15 Is that all right?
16 MR. MORRIS: Sure.
17 BY MS. DEITSCH-PEREZ:
18 Q. Okay. Okay. Can you see Exhibit
19 110?
20 A. I can, yes.
21 Q. Okay. And I'm going to scroll down
22 because what I'm going to ask you about is
23 the email from Fred Caruso to Brian Collins,
24 JP Sevilla, Frank Waterhouse, Dave Klos, with
25 a copy to you.

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1 J. Seery
2 outstanding fees and cost reimbursements.
3 What kind of fees were these?
4 A. I believe some of these were fees
5 related to shared services and others were
6 reimbursements for costs.
7 Q. Okay. And do you see that there is
8 a line item for HCM Services and a -- and the
9 amount 116,531 is listed?
10 A. Yes.
11 Q. And so was that HCMLP demanding
12 money from HCM Services for services that
13 HCMLP had provided to HCM Services?
14 A. I don't --
15 MR. MORRIS: Objection to the
16 form of the question.
17 A. I don't think so.
18 Q. Why not?
19 A. I think it's for cost
20 reimbursement.
21 Q. What, what cost was -- was it
22 seeking to be reimbursed for?
23 A. I -- I don't recall. This is not
24 a -- something I recall specifically.
25 Q. But in any event, this Exhibit 110

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1 J. Seery

2 confirms that HCMLP was either providing

3 services or advancing costs for HCM Services

4 and then billing HCM Services?

5 THE WITNESS: Objection to the

6 form of the question.

7 A. I -- I believe it was the latter.

8 Q. Can you exclude the possibility

9 that this was an instance of HCMLP billing

10 HCM Services for services performed by HCMLP?

11 A. Well, there was no agreement, so I

12 don't know the basis of it, but we could look

13 for it. I don't -- I don't think that's the

14 case.

15 Q. Do you know whether or not there

16 was an oral agreement with respect to HCM

17 providing services to HCM Services?

18 A. Not that I ever heard of.

19 Q. Did you ever specifically make an

20 inquiry --

21 A. I, I have made --

22 (Simultaneous speaking.)

23 A. You're not finished? I'm sorry.

24 Q. You can -- you can answer.

25 A. I, I have --

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1 J. Seery

2 Q. Okay. Do you have a specific

3 recollection of asking any or -- any of them

4 whether there was an unwritten agreement

5 between HCM and HCM Services for HCM to

6 provide shared services, back office

7 services, to HCM Services?

8 A. No, I never would have asked that

9 question.

10 Q. Did -- do you have a specific

11 recollection of what question you did ask?

12 A. Yes.

13 Q. What was it?

14 A. Do we have a shared services

15 agreement.

16 Q. Did you make it clear that you were

17 asking for a written or unwritten agreement?

18 A. No. As I said, if I asked if there

19 was an agreement, I would have assumed it was

20 a formal written agreement because that's the

21 way the business was run.

22 And I didn't ask if there was some

23 unwritten, secret, hidden or not so secret

24 but not shared with anybody agreement. I

25 don't -- it's not something I inquired about.

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1 J. Seery

2 Q. I take it you got the gist.

3 A. I have made inquiry regarding

4 whether there was any arrangement for -- to

5 provide services and pay back for those

6 services, and I was told there wasn't.

7 Q. Who did you make --

8 A. That's my recollection.

9 Q. Who did you -- who did you make an

10 inquiry to?

11 A. Our -- our accounting team.

12 Q. And any -- which people?

13 A. That would be Waterhouse and Klos

14 and Hendrix.

15 It's not a specific inquiry that I

16 made. There was -- this was over the time

17 during the case.

18 Q. You actually have a specific

19 recollection of speaking to any of the people

20 that you just listed, like to Surgent, Klos

21 and --

22 A. I didn't mention Surgent.

23 Q. Okay. Klos, Hendrix and

24 Waterhouse?

25 A. Yes.

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1 J. Seery

2 Q. Did you ask whether there was an

3 agreement caused by a pattern and practice of

4 conduct?

5 A. No.

6 MR. MORRIS: Hey, Deborah, I'd

7 really like to take that break now.

8 That's why I started giving a --

9 MS. DEITSCH-PEREZ: Okay.

10 MR. MORRIS: -- a warning quite

11 some time ago.

12 Thank you.

13 MS. DEITSCH-PEREZ: Okay, okay.

14 MR. MORRIS: Yep, let -- let's

15 come back --

16 VIDEO TECHNICIAN: The time is

17 5:37. We're going off the record.

18 (Recess taken.)

19 VIDEO TECHNICIAN: The time is

20 5:58. We're back on the record.

21 BY MS. DEITSCH-PEREZ:

22 Q. Mr. Seery, I'm showing you what's

23 been premarked as Exhibit 112. I don't know

24 if you have it there, but if not, let me

25 scroll through it.

<p style="text-align: right;">Page 214</p> <p>1 J. Seery</p> <p>2 Have you seen it before?</p> <p>3 A. It -- it looks familiar, yes.</p> <p>4 Q. Okay. This is a letter dated</p> <p>5 January 7, from you to Mr. Dondero at HCR --</p> <p>6 HCRE Partners.</p> <p>7 Did you cause this letter to be</p> <p>8 sent?</p> <p>9 A. Yes.</p> <p>10 Q. And like Exhibit 1 -- I think 111,</p> <p>11 was this written by your counsel?</p> <p>12 A. It -- it certainly had my counsel's</p> <p>13 input and my input, so how --</p> <p>14 Q. Okay.</p> <p>15 A. -- I probably got a base and marked</p> <p>16 it up, and they finished it.</p> <p>17 Q. Okay. And --</p> <p>18 A. Same as the other.</p> <p>19 Q. Okay. And was there any</p> <p>20 communication, other than Exhibit 112,</p> <p>21 between you and HCRE Partners about the HCRE</p> <p>22 term loan?</p> <p>23 A. No.</p> <p>24 Q. Do you know whether -- was there a</p> <p>25 payment due on the HCRE term loan, in your</p>	<p style="text-align: right;">Page 215</p> <p>1 J. Seery</p> <p>2 view, by December 31, 2020?</p> <p>3 A. I believe there was, yes.</p> <p>4 Q. And was it made?</p> <p>5 A. No.</p> <p>6 Q. And was the payment made in January</p> <p>7 of 2021?</p> <p>8 A. A payment was made in January of</p> <p>9 2021 on account that -- the full amount that</p> <p>10 was demanded.</p> <p>11 Q. Well, when high -- when HCM</p> <p>12 received the payment from HCRE Partners, who</p> <p>13 facilitated the -- the making of the payment,</p> <p>14 as far as you know?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know if anyone from Highland</p> <p>17 Capital Management was involved in the making</p> <p>18 of HCRE's payment to HCM?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you know whether HCRE had</p> <p>21 employees?</p> <p>22 A. I don't believe it did.</p> <p>23 Q. And so was it your understanding,</p> <p>24 generally, that HCM employees provided</p> <p>25 services like paying bills for HCRE Partners?</p>
<p style="text-align: right;">Page 216</p> <p>1 J. Seery</p> <p>2 MR. MORRIS: Objection to the</p> <p>3 form of the question.</p> <p>4 A. It was similar to HCM Services, but</p> <p>5 that doesn't mean they were the only people</p> <p>6 to do anything for HCRE; I just don't know.</p> <p>7 Q. Well, when HCM received the</p> <p>8 payments in January of 2021 from HCRE and HCM</p> <p>9 Services, was there any communication that</p> <p>10 these payments were being made to pay down</p> <p>11 the term loan generally as opposed to -- to</p> <p>12 making the payment otherwise to be made on</p> <p>13 December 31, 2020?</p> <p>14 MR. MORRIS: Objection to the</p> <p>15 form of the question.</p> <p>16 A. I -- I'm not sure I understand your</p> <p>17 question, but I -- I don't recall any</p> <p>18 specific communication. Certainly if there</p> <p>19 was a payment made, we would have applied it</p> <p>20 on the total balance due, as you described.</p> <p>21 Q. But did anyone on behalf of the</p> <p>22 HCRE or HCMS communicate that the payments</p> <p>23 were to be applied to the total balance due</p> <p>24 as opposed to fulfilling the payment that</p> <p>25 otherwise was typically made at the end of</p>	<p style="text-align: right;">Page 217</p> <p>1 J. Seery</p> <p>2 the -- of the year?</p> <p>3 MR. MORRIS: Objection to the</p> <p>4 form of the question.</p> <p>5 A. Again, I -- I don't think I</p> <p>6 understand your question, but I don't know if</p> <p>7 there was any communication at all. I just</p> <p>8 don't recall.</p> <p>9 Q. You don't recall one?</p> <p>10 A. No.</p> <p>11 Q. Did you look, in the course of</p> <p>12 responding to the discovery, at the -- what</p> <p>13 the -- the means by which HCM received the</p> <p>14 payments from HCRE and HCMS?</p> <p>15 MR. MORRIS: Objection to the</p> <p>16 form of the question.</p> <p>17 A. I -- I believe I did. I certainly</p> <p>18 looked at the total payments that came in</p> <p>19 from various entities and how we applied</p> <p>20 them, but I don't recall any specifics around</p> <p>21 communication.</p> <p>22 Q. Well, did you look for the wire</p> <p>23 transfer information?</p> <p>24 MR. MORRIS: Objection to the</p> <p>25 form of the question.</p>

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1 J. Seery

2 A. I, I --

3 Q. Was there -- let me rephrase.

4 Was -- did the payments come in by

5 wire?

6 A. I don't recall.

7 Q. Did you look for any communication

8 that would accompany the payment?

9 For example, a check can have a

10 note on the note line, a wire can have a note

11 on the re line, an ACH payment can have a

12 note on a re line. Did you attempt, in

13 responding to the discovery in these notes

14 cases, to find any such communications?

15 MR. MORRIS: Objection to the

16 form of the question.

17 A. I'm relatively certain it didn't

18 come in as a check, because I would have

19 known that. I just don't recall if it came

20 in by wire or ACH, and I didn't look for any

21 specific communication that accompanied the

22 wire or the ACH payment.

23 Q. Okay. And with respect to HCRE,

24 did you send a letter like the one we looked

25 at earlier for NexPoint, contending that the

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1 J. Seery

2 communicate an acknowledgment or acceptance

3 that the loan was in default and that the

4 payment would be applied to the principal --

5 to the balance?

6 A. Other than the terms of the note,

7 no.

8 Q. And do you have an understanding of

9 why -- strike that.

10 Do you have an understanding, based

11 on personal knowledge, of why the HCRE and

12 HCMS payments were not made in December of

13 2020?

14 MR. MORRIS: Objection to the

15 form of the question.

16 A. I -- I believe I do.

17 Q. And what is that knowledge based

18 on?

19 A. The same edict that we discussed

20 with Mr. Rukavina earlier in the day.

21 Q. So tell me the actual words that

22 you contend Ms. Hendrix said to you that

23 caused you to believe whatever it is you

24 believe about what Mr. Dondero said.

25 MR. MORRIS: Objection to the

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1 J. Seery

2 payment had been applied to the principal

3 balance as opposed to satisfying and curing

4 any default on the note?

5 MR. MORRIS: Objection to the

6 form of the question.

7 A. If -- if we did send it, it would

8 have been in the -- the production. It

9 certainly would have -- there was no cure

10 provision in the notes, so we would have

11 applied it in the same way as we did the NPA

12 payment and the services payment.

13 Q. If there are in fact no

14 post-payment letters for the HCRE term loan

15 and the HCMS term loan, was there a reason

16 for that?

17 A. No, no reason if there are none.

18 They're not required. The notes are very

19 clear with respect to the waiver of demand,

20 presentment.

21 So there's no requirement of it. I

22 thought there would be, that I would have

23 sent it, but I don't -- don't recall

24 specifically.

25 Q. Did anyone on behalf of HCRE ever

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1 J. Seery

2 form of the question, and -- asked and

3 answered.

4 A. I -- I don't recall the specific

5 words.

6 Q. Now, at -- in -- and -- and you

7 don't recall when the words were sent to you

8 either; you can't say whether it was December

9 or January or some other time?

10 MR. MORRIS: Objection to the

11 form of the question --

12 A. No, I --

13 MR. MORRIS: -- mischaracterizes

14 the testimony.

15 A. -- I'm pretty clear that it -- I

16 learned of the action in December.

17 I may have learned of the words in

18 December. It could have been in January, on

19 or about the time I sent the demand note.

20 But it wouldn't have been, as you phrased it,

21 some other time.

22 Q. Now, in -- in or around December of

23 2020, you understood there was a dispute

24 between Mr. Dondero and -- and affiliated

25 companies and the debtor about whether the

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1 J. Seery
2 affiliated companies had overpaid shared
3 service fees to Highland, correct?
4 A. Absolutely not.
5 Q. Are you not aware that Mr. Dondero
6 contended that NexPoint, for example, had
7 overpaid Highland by many millions of dollars
8 for shared service fees?
9 A. I'm quite aware that Mr. Dondero
10 has fabricated a story as part of the
11 negotiations for a pot plan. In fact, he
12 included it in one of the term sheets, to
13 fabricate a claim about additional services.
14 I'm also quite aware of other
15 evidence that shows that's not the case.
16 Q. Let's take this in pieces.
17 How much did Mr. Dondero contend
18 shared services had been overpaid --
19 A. I don't recall --
20 Q. -- what amount?
21 A. I don't recall the exact amount.
22 Q. More than 10 million?
23 A. I think he claimed 14, some number
24 like that, but it doesn't have any connection
25 to reality.

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1 J. Seery
2 going to call him a liar like he's been
3 calling everybody else, so I'll be
4 polite about it, but it is relevant --
5 THE WITNESS: Well, the reason
6 for that is because I don't lie, and I
7 just -- I just don't do it. I don't
8 fabricate testimony. So you can call
9 me whatever you like. It doesn't
10 matter. I -- I tell the truth.
11 I have a very good memory. To the
12 extent I can't remember the specific
13 words of something from months ago, I --
14 I'm unable to remember those specific
15 words, but I have a pretty darn good
16 memory.
17 BY MS. DEITSCH-PEREZ:
18 Q. Okay. But -- but it would be in
19 your interest -- interest to -- to take
20 something that was said about a clear dispute
21 about the shared services payments and try to
22 apply it to some other payments, wouldn't it,
23 Mr. Seery?
24 A. Not -- not in any way whatsoever.
25 Q. Well, that's why I'm asking,

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1 J. Seery
2 Q. Mr. Seery, what did you do to
3 investigate whether or not there had been
4 overpayments of shared service fees by
5 NexPoint to Highland?
6 MR. MORRIS: I'm just going to
7 caution the -- the questioner not to go
8 too far down this path. These are
9 topics that are related to a completely
10 separate contested matter, actually --
11 (Simultaneous speaking.)
12 MR. MORRIS: Okay. So I just --
13 okay, that's fine.
14 MR. RUKAVINA: Yeah, I'm not
15 trying to litigate that, it's --
16 MR. MORRIS: Yep.
17 MS. DEITSCH-PEREZ: -- it's
18 relevant to this whole incident that
19 Mr. Seery is --
20 MR. MORRIS: I don't think so,
21 but --
22 MS. DEITSCH-PEREZ: -- is --
23 MR. MORRIS: -- but go ahead, I'm
24 not directing him not to answer.
25 MS. DEITSCH-PEREZ: I -- I'm not

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1 J. Seery
2 Mr. Seery. You were aware of the dispute,
3 whether -- regardless of your belief as to
4 the bona fides of it, you were aware of an
5 actual dispute about whether NexPoint had
6 overpaid shared services fees, correct?
7 A. I --
8 MR. MORRIS: Objection to the
9 form of the question.
10 A. I -- I would not concede that
11 there's a dispute, because there is no
12 legitimate disagreement among what was
13 performed and what was paid.
14 I will -- I will agree that
15 Mr. Dondero came up with a story, or we can
16 say a -- an idea, that NexPoint had somehow
17 overpaid for the services that it received.
18 Q. Ms. -- Mr. Seery, I -- I understand
19 that you're -- you are anxious to be an
20 advocate for your side. I'm asking you for
21 strictly factual testimony.
22 Was there a dispute, meaning one
23 side said one thing and the other side said
24 the other, about whether shared services fees
25 had been overpaid?

<p style="text-align: right;">Page 226</p> <p>1 J. Seery</p> <p>2 MR. MORRIS: Objection, asked and</p> <p>3 answered.</p> <p>4 A. I -- I will concede that</p> <p>5 Mr. Dondero claimed that shared services by</p> <p>6 NexPoint were overpaid for.</p> <p>7 Q. Okay. And will you also concede</p> <p>8 that you disagreed with that?</p> <p>9 A. I don't need to concede that. I do</p> <p>10 disagree with that.</p> <p>11 Q. Okay. Hence, we have a dispute,</p> <p>12 okay.</p> <p>13 MR. MORRIS: Objection to the</p> <p>14 form of the question.</p> <p>15 Q. Mr. Seery, if you don't recall the</p> <p>16 words that Ms. Hendrix said to you, how do</p> <p>17 you know that whatever this edict was that</p> <p>18 you have mentioned did not relate simply to</p> <p>19 don't pay any more shared services because</p> <p>20 they have been overpaid?</p> <p>21 MR. MORRIS: Objection to the</p> <p>22 form of the question, "ans" and</p> <p>23 answered -- asked and answered.</p> <p>24 A. Again, I believe that it was</p> <p>25 Ms. Hendrix. It could have been Mr. Klos.</p>	<p style="text-align: right;">Page 227</p> <p>1 J. Seery</p> <p>2 Over time it could be both. We've certainly</p> <p>3 had discussions about it. I believe that it</p> <p>4 related to the shared services. I believe it</p> <p>5 also related to the notes, because the notes</p> <p>6 weren't paid.</p> <p>7 Q. Okay. And am I correct that the</p> <p>8 only reason you believe it also applied to</p> <p>9 the notes was because the notes weren't</p> <p>10 paid --</p> <p>11 MR. MORRIS: Objection --</p> <p>12 Q. -- not because of the words used?</p> <p>13 A. The -- the words were not limiting</p> <p>14 to -- that I recall in any way.</p> <p>15 Q. Were the words -- did the words</p> <p>16 specifically include don't pay the notes?</p> <p>17 A. I believe I testified that I don't</p> <p>18 recall the specific words, so I can't --</p> <p>19 Q. Okay.</p> <p>20 A. -- say what the specific words</p> <p>21 were.</p> <p>22 Q. And -- and, Mr. Seery, I recognize</p> <p>23 that you're a smart guy and a cagey witness,</p> <p>24 so you have said several times that the</p> <p>25 reason you believe the edict applied to the</p>
<p style="text-align: right;">Page 228</p> <p>1 J. Seery</p> <p>2 notes was because they weren't paid.</p> <p>3 And I'm just asking you to answer,</p> <p>4 honestly, whether your belief that the edict</p> <p>5 concerned the notes was simp -- happenstance</p> <p>6 of what happened, not because of what was</p> <p>7 said to you?</p> <p>8 MR. MORRIS: Objection to the</p> <p>9 form of the question, asked and</p> <p>10 answered.</p> <p>11 A. The idea that you're calling me</p> <p>12 cagey is -- is insulting and rude, so you</p> <p>13 should please withdraw that. No one's ever</p> <p>14 called me cagey, and I always am honest.</p> <p>15 I said very specifically to</p> <p>16 Mr. Rukavina how I heard what I heard, how I</p> <p>17 came to understand it. I don't recall the</p> <p>18 specific words or the exact time. It is</p> <p>19 clear what the facts are and what happened,</p> <p>20 so that supports my interpretation of what I</p> <p>21 heard and my recollection of it.</p> <p>22 Q. You -- you can't admit, as you sit</p> <p>23 here today, you're not sure whether or not</p> <p>24 the edict concerned the notes?</p> <p>25 A. I didn't hear the edict. All I</p>	<p style="text-align: right;">Page 229</p> <p>1 J. Seery</p> <p>2 know is that we didn't get the shared service</p> <p>3 payments and we didn't get the -- we didn't</p> <p>4 get the -- the note payments, and I read</p> <p>5 Mr. Waterhouse's testimony from two days ago,</p> <p>6 which seemed to confirm everything I just</p> <p>7 said.</p> <p>8 So it -- I think it makes sense,</p> <p>9 but I don't have a specific recollection of</p> <p>10 what was told to me and I do recollect that</p> <p>11 the shared service payments were not made,</p> <p>12 but that was before the amounts on the notes</p> <p>13 were due, so there wouldn't have been a</p> <p>14 discussion about the notes.</p> <p>15 Q. Now, did you look at the payment</p> <p>16 history on all of the term loan notes that --</p> <p>17 that payments had been made prior to December</p> <p>18 31, 2020 in excess of the amounts due, if</p> <p>19 you -- if -- if the obligor was paying the</p> <p>20 minimums for the number of years the notes</p> <p>21 had been outstanding?</p> <p>22 A. Which -- which notes?</p> <p>23 Q. All of the note -- did you do that</p> <p>24 exercise for all of the notes, all of the</p> <p>25 term loan notes?</p>

<p style="text-align: right;">Page 230</p> <p>1 J. Seery</p> <p>2 MR. MORRIS: Objection to the</p> <p>3 form of the question.</p> <p>4 A. We -- we looked at the payments on</p> <p>5 each of the notes, yes.</p> <p>6 Q. And did you determine whether or</p> <p>7 not the amounts paid in total prior to</p> <p>8 December 31, 2020 exceeded the total amount</p> <p>9 due of principal and interest on the minimum</p> <p>10 principal and interest payments due on those</p> <p>11 notes --</p> <p>12 (Simultaneous speaking.)</p> <p>13 A. I --</p> <p>14 Q. -- outstanding?</p> <p>15 A. We certainly looked at that. I</p> <p>16 don't believe that's the case for each of</p> <p>17 them, but I don't have a specific</p> <p>18 recollection of how they each balance out.</p> <p>19 Q. Did any of the loans have payments</p> <p>20 that were made that, in total, exceeded the</p> <p>21 total amount of minimum principal and</p> <p>22 interest payments due on the loans for the</p> <p>23 number of years they had been outstanding?</p> <p>24 A. One of them may have; I don't</p> <p>25 recall. I don't recall specifically which</p>	<p style="text-align: right;">Page 231</p> <p>1 J. Seery</p> <p>2 one.</p> <p>3 Q. And were there documents that you</p> <p>4 looked at in connection with that inquiry?</p> <p>5 A. There would be a payment ledger.</p> <p>6 Q. And have you produced that payment</p> <p>7 ledger?</p> <p>8 A. Yes.</p> <p>9 MR. MORRIS: Yes, we have.</p> <p>10 Q. Is there anyone from HCRE that you</p> <p>11 contend -- and I apologize if I asked that,</p> <p>12 because I'm -- I'm maybe mixing up HC -- HCMS</p> <p>13 and HCRE.</p> <p>14 But is there anyone from HCRE</p> <p>15 that -- that acknowledged to you or said</p> <p>16 something to you, admitting that the payment</p> <p>17 that was made in January of 2021 was a</p> <p>18 payment towards the overall principal and not</p> <p>19 the payment that was due at the end of 2020?</p> <p>20 A. No, I don't believe I had</p> <p>21 discussion with anybody who claimed to</p> <p>22 represent HCRE; which, as you said, had no</p> <p>23 employees.</p> <p>24 Q. Have you -- strike that.</p> <p>25 Earlier I couldn't tell if it was</p>
<p style="text-align: right;">Page 232</p> <p>1 J. Seery</p> <p>2 Mr. Morris talking or you, and I apologize</p> <p>3 for that, but somebody said something like</p> <p>4 constructive fraud is not an issue in any of</p> <p>5 the note cases and therefore, you know, we</p> <p>6 shouldn't be looking at -- at solvency.</p> <p>7 MR. MORRIS: That would have --</p> <p>8 MS. DEITSCH-PEREZ: Was that you?</p> <p>9 MR. MORRIS: -- that would --</p> <p>10 that would have been me.</p> <p>11 There is no claim for constructive</p> <p>12 fraudulent transfer.</p> <p>13 BY MS. DEITSCH-PEREZ:</p> <p>14 Q. And so let me ask Mr. Seery, as the</p> <p>15 30(b)(6) witness for HCM, is it your position</p> <p>16 that constructive fraud and therefore</p> <p>17 solvency has no bearing on any of the note</p> <p>18 cases?</p> <p>19 MR. MORRIS: Objection to the</p> <p>20 form of the question.</p> <p>21 A. With respect to these claims, I</p> <p>22 think that the -- the allegations are pretty</p> <p>23 clear that there is no agreement, there's no</p> <p>24 subsequent agreement. That's nonsense. If</p> <p>25 there is one --</p>	<p style="text-align: right;">Page 233</p> <p>1 J. Seery</p> <p>2 Q. Mr. -- Mr. Seery --</p> <p>3 A. Well, I'm answering your question.</p> <p>4 (Simultaneous speaking.)</p> <p>5 MR. MORRIS: Please let him</p> <p>6 finish.</p> <p>7 A. So when -- if, in some world, that</p> <p>8 story is bought, then we think it's clearly</p> <p>9 an actual fraud.</p> <p>10 MO* MS. DEITSCH-PEREZ: Move to</p> <p>11 strike.</p> <p>12 Q. I'm asking a simple question,</p> <p>13 Mr. Seery. As HCM's 30(b)(6) witness, do you</p> <p>14 agree with the assertion of your counsel that</p> <p>15 constructive fraud is not an issue, is not</p> <p>16 something HCM is asserting in the note cases?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay. And therefore, is it also</p> <p>19 your position, as the 30(b)(6) witness for</p> <p>20 HCM, that whether Highland was or was not</p> <p>21 solvent at the time the notes were made or at</p> <p>22 the time the forgiveness condition was agreed</p> <p>23 upon, that the solvency of Highland is</p> <p>24 irrelevant to those issues?</p> <p>25 MR. MORRIS: Objection, it's not</p>

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1 J. Seery
2 a 30(b)(6) topic, and I object to the
3 extent it calls for a legal conclusion.
4 MS. DEITSCH-PEREZ: I'm -- I'm
5 just -- can you read it back and have
6 the witness answer.
7 MR. MORRIS: Okay.
8 (As read by the reporter):
9 "QUESTION: And therefore, is it
10 also your position, as the 30(b)(6)
11 witness for HCM, that whether Highland
12 was or was not solvent at the time the
13 notes were made or at the time the
14 forgiveness condition was agreed upon,
15 that the solvency of Highland is
16 irrelevant to those issues?"
17 A. I -- I don't think it's irrelevant.
18 It's not a precondition to a case for an
19 actual fraud. But when these things are done
20 in the face of solve -- insolvency, when
21 they're -- when -- when the supposed
22 agreements are done on the eve or after
23 bankruptcy, that sure adds to the badges of
24 fraud.
25 MS. DEITSCH-PEREZ: Then, John,

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1 J. Seery
2 of -- each of the notes and when the
3 forgiveness condition arose, what is your
4 answer as to whether Highland was solvent and
5 why?
6 MR. MORRIS: Objection to the
7 form of the question.
8 A. There's -- there's about twelve
9 different dates in there, but why don't I
10 make it easy.
11 In '17, I think Highland was
12 insolvent. Highland had significant exposure
13 to litigation claims that it had not properly
14 put on its balance sheet, and I think the
15 actions of the principals show that they
16 understood the risks with respect to those
17 claims. And that's why you have a number of
18 actions, including taking money offshore,
19 including rolling out these notes thirty
20 years. That's 2017.
21 '18 is similar, because the --
22 because the actions get more and more
23 developed and the claims against Highland get
24 bigger and bigger.
25 In '19 it comes crumbling down and

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1 J. Seery
2 we -- we may have an issue about
3 picking up this deposition. Let me --
4 let me ask another question.
5 Q. Do you have a solvency analysis
6 done for these note cases?
7 A. Not for these note cases, no.
8 Q. And are you prepared to explain
9 right now, in this deposition, how -- what
10 Highland's solvency was at any of the time
11 periods, either when the notes were made or
12 when the alleged agreement regarding
13 forgiveness -- potential forgiveness of the
14 notes was entered into?
15 Are you prepared today to tell us
16 what you think about Highland's solvency and
17 why?
18 MR. MORRIS: Objection to the
19 form of the question.
20 A. I -- I believe I already did, but I
21 can do it again, if you'd like. Mr. Rukavina
22 asked me very specific questions about where
23 I thought solvency was, and I gave my very
24 specific answers.
25 Q. For each -- for the dates of each

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1 J. Seery
2 Redeemer gets a very large arbitration award
3 that it's about to win and Highland files for
4 bankruptcy.
5 I don't -- the -- the idea that
6 there are these subsequent agreements, we
7 don't even agree that that exists. We think
8 it's completely fabricated and false. But to
9 the extent it incurred -- occurred during '17
10 '18, December/January. '18, '19,
11 December/January. '19, '20 after the
12 bankruptcy, yeah, I think that -- that pretty
13 much shows that they fall into insolvency.
14 Again, with an actual fraud, we
15 don't need it. But it certainly helps with
16 the badges of fraud.
17 Q. Is that your complete answer?
18 A. To -- to your question, yes.
19 Q. And do you have -- Highland has
20 made breach of fiduciary duty claims against
21 Dugaboy and then aiding and abetting claims
22 against Nancy Dondero and Jim Dondero?
23 A. That's correct.
24 Q. Can you tell me from whence those
25 fiduciary duties come?

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1 J. Seery

2 A. Yes.

3 Q. Where are -- where can we find

4 them?

5 MR. MORRIS: Objection to the

6 form of the question.

7 A. They're -- they're in the amended

8 complaint.

9 Q. No, no, no, where -- where do the

10 duties come from? What are the duties based

11 on?

12 A. With respect to both Dugaboy and

13 Nancy Dondero, Nancy Dondero is the trustee

14 of Dugaboy. Dugaboy was a limited partner.

15 Limited partners are not permitted to run the

16 affairs of the partnership.

17 She has testified that she made

18 agreements on behalf of Highland. So she

19 stepped into the role of a general partner,

20 as did Dugaboy. Her testimony was very clear

21 on these points, that she cut the agreements

22 on behalf of Highland.

23 Q. Okay. So it is -- are you saying

24 that it is the HCMLP partnership agreement

25 that gives rise to the fiduciary duties?

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1 J. Seery

2 form of the question, mischaracterizes

3 the testimony.

4 A. The duties are under Delaware law

5 related to partnerships.

6 Q. Yes. And the partnership duties

7 that you're talking about are the HCMLP --

8 the fourth amended partnership agreement; is

9 that right?

10 MR. MORRIS: Objection to the

11 form of the question, calls for a legal

12 conclusion.

13 A. That's the partnership agreement,

14 yes.

15 Q. Okay. And you're not saying these

16 duties just arise out of the air?

17 MR. MORRIS: Objection to the

18 form of the question, mischaracterizes

19 the testimony.

20 A. I didn't say they arise out of the

21 air, no.

22 Q. Okay. I mean, you are the witness

23 designated to talk about these -- these

24 breach of fiduciary duty claims, correct?

25 A. That is correct.

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1 J. Seery

2 MR. MORRIS: Objection to the

3 form of the question, asked and

4 answered, mischaracterizes the

5 testimony. It calls for a legal

6 conclusion.

7 A. It -- it's -- in my opinion, it's

8 the law, and our position is it's the law,

9 that when a limited partner takes over the

10 operation and running of the partnership and

11 takes on those duties, they step into the

12 role of a general partner.

13 And that is the -- we don't believe

14 this agreement exists, but if it were to

15 somehow metastasize into something of an

16 agreement, then clearly we believe that it

17 breached the fiduciary duties that those

18 persons and entities who took on those duties

19 would have to the partnership.

20 Q. Okay. And I'm -- I'm just -- I'm

21 just trying to understand your testimony.

22 You're talking about duties under

23 the -- the HCM fourth amended limited

24 partnership agreement?

25 MR. MORRIS: Objection to the

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1 J. Seery

2 Q. Is there anything other than law,

3 generally, and the fourth amended limited

4 partnership agreement of Highland Capital

5 Management that gives rise to the duties that

6 you are contending Dugaboy breached and Nancy

7 Dondero and Jim Dondero allegedly aided in

8 the breaching of?

9 MR. MORRIS: Objection, asked and

10 answered.

11 A. There's also facts.

12 Q. Okay. And the, the facts -- the

13 fact that you said underlaid the claim was

14 their -- the supposed stepping into the shoes

15 of the general partner, is --

16 MR. MORRIS: Objection to --

17 Q. -- anything else?

18 MR. MORRIS: Objection to the

19 form of the question, mischaracterizes

20 the testimony, asked and answered.

21 A. Stepping into --

22 Q. Mr. Seery, correct me if I'm wrong.

23 If there's some other fact that you are

24 pointing to, let me know.

25 MR. MORRIS: Objection to the

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1 J. Seery
2 form of the question, asked and
3 answered.
4 A. I -- I believe I gave a pretty
5 good, concise summary, but is there more that
6 you want to know?
7 When it -- our position is that
8 when a limited partner takes over the
9 management or any of the management roles of
10 the partnership and enters into an agreement
11 on behalf of the partnership, they stepped
12 into the general partner role.
13 When they're in the general partner
14 role they have fiduciary duties to the
15 partnership and all of the partners. When
16 they breach those duties, which we argue is
17 the case if this supposed agreement were
18 actually something, then they should be
19 liable for the damages caused by those
20 breaches.
21 Q. You've said, a couple times now, if
22 a limited partner steps in and manages the
23 partnership.
24 Can you tell me every way in which
25 you contend Dugaboy or Nancy Dondero as the

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1 J. Seery
2 Highland?
3 A. No. Taking control of the payment
4 to an affiliate of the general partner for no
5 consideration and claiming that you are able
6 to do that, we think that is sufficient.
7 MO* MR. DEITSCH-PEREZ: Move to
8 strike everything after "No."
9 Q. Let me just get it clear. There is
10 no other action, other than entering into
11 this agreement, that you contend is
12 management by Dugaboy or Nancy Dondero; is
13 that correct?
14 A. No, that's not correct. It's
15 everything around the supposed agreement.
16 So, so it -- it can't be cabined to just what
17 the supposed agreement is, it's all of the
18 other -- lack of -- of -- if it were a real
19 agreement, the lack of any sort of care, the
20 lack of any sort of loyalty, it all permeates
21 from this supposed agreement --
22 (Simultaneous speaking.)
23 A. -- these folks haven't thought
24 through --
25 MR. MORRIS: Just let him finish.

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1 J. Seery
2 trustee of Dugaboy took a management step?
3 A. Nancy Dondero and Jim Dondero claim
4 that Nancy Dondero and Dugaboy entered into
5 an agreement on behalf of the partnership and
6 gave away 63 million -- or maybe that's the
7 total amount of the notes, but some 50
8 million-ish amount of notes for virtually
9 nothing - and in most instances could
10 actually be nothing - with no investigation,
11 no discussion, no analysis and really no
12 authority.
13 But they -- they assert that that
14 was the agreement. And without any
15 consideration received by this entity,
16 nothing, they claim that they did this.
17 Now we don't -- we don't believe
18 this agreement exists, again, to be clear.
19 We think it's fabricated. We think that
20 that's really beyond any kind of dispute. We
21 think you all know that too, but we'll play
22 along.
23 Q. Is there any other action that you
24 contend is management that you contend
25 Dugaboy or Nancy undertook with respect to

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1 J. Seery
2 A. -- the full implications of what
3 they are arguing.
4 Q. Okay. Other than the things that
5 you have testified to in the last ten or
6 fifteen minutes, there are no other acts of
7 supposed management that you contend Dugaboy
8 or Nancy undertook that form the basis for
9 the breach of fiduciary duty claims, correct?
10 MR. MORRIS: Objection to the
11 form of the question.
12 A. I -- I think I've touched on all of
13 them.
14 Q. Okay. Thank you. Okay. I'm going
15 to show you what has been marked as --
16 premarked as Exhibit 109.
17 Is this a document that you have
18 seen before?
19 A. I -- I believe I have, but you're
20 literally just showing me a slice of the
21 heading.
22 Q. I know. It's the -- it's the
23 Notice of Filing of Debtor's Amended
24 Schedules, and then annexed to it - let me
25 get to that - are the Global Notes and

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1 J. Seery
2 Statement of Limitations, Methods and
3 Disclaimers Regarding Debtor's Amended
4 Schedules of Assets and Liabilities.
5 Is that a document that you have
6 seen before?
7 A. I -- I don't recall it
8 specifically.
9 Q. Well, let me ask a different way.
10 In -- this was filed in September of 2020.
11 What was your role with respect to
12 filings of the debtor in September of 2020?
13 A. Depending on the filing, I executed
14 many of them. So if I executed this one,
15 please let me know.
16 I certainly was around and
17 consulted with respect to all the filings. I
18 was the CEO of the company.
19 That's my signature, so I've seen
20 this.
21 Q. Okay, okay.
22 (Simultaneous speaking.)
23 A. I may not have seen the -- I don't
24 know if I -- I just don't recall the, the --
25 the piece at the top.

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1 J. Seery
2 believe it wasn't accurate at the time.
3 MS. DEITSCH-PEREZ: Okay. Thank
4 you.
5 Okay. Why don't we take a few
6 minutes and I'm going to have a look at
7 my notes and -- and I'll have a better
8 idea of how much longer I have then.
9 VIDEO TECHNICIAN: The time is
10 6:36. We're going off the record.
11 (Recess taken.)
12 VIDEO TECHNICIAN: The time is
13 6:41. We're back on the record.
14 MS. DEITSCH-PEREZ: Okay. Thank
15 you.
16 Thank you very much, Mr. Seery.
17 I'm going to pass back to whomever might
18 want to ask you anything more.
19 MR. RUKAVINA: Well, I think
20 Mr. Horn is busy. I have one more
21 question for you, Mr. Seery.
22 MR. HORN: I -- I have no
23 questions, so I'll defer to Davor if he
24 has --
25 MR. RUKAVINA: Thank you, thank

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1 J. Seery
2 Q. Okay. But, generally, if you
3 signed a declaration under penalty of perjury
4 for non-individual debtors that was then
5 annexed to a filing, you would have looked
6 through the filing and assured yourself that
7 it was correct, to the best of your knowledge
8 and belief?
9 A. I would have either looked through
10 the filing or I would have reviewed it with
11 my team, whomever prepared it.
12 Q. And so as you sit here today, do
13 you have any reason to believe that there are
14 inaccuracies in **doCKET 1082**?
15 MR. MORRIS: Do you want to
16 give -- do you need to read the
17 document?
18 A. I have no --
19 Q. Yeah. And I -- and I emailed it to
20 John, so if you want to sit down and take a
21 look at it, please --
22 (Simultaneous speaking.)
23 A. No, I -- I don't need to review it.
24 No one's brought anything to my
25 attention. I don't -- I have no reason to

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1 J. Seery
2 you.
3 EXAMINATION
4 BY MR. RUKAVINA:
5 Q. My only question was as follows:
6 When you were answering counsel's questions,
7 you mentioned something about a payment
8 ledger on the notes.
9 Do you recall that?
10 A. Not a specific -- I would have
11 looked at a payment ledger. I don't have
12 a -- I'm not thinking of one particular
13 payment ledger.
14 The one that -- that was one of the
15 exhibits --
16 Q. That's where I'm going --
17 A. -- is a type of payment ledger.
18 That one, it looks like it was --
19 that's actually the actual schedule of
20 payment, because it shows as if the payments
21 had made -- it doesn't show what's been made,
22 but it actually shows you the schedule of --
23 all the way to maturity, I believe, and so --
24 Q. Well, here's -- here's where I'm
25 going with this.


<p style="text-align: right;">Page 250</p> <p>1 J. Seery</p> <p>2 A. Okay.</p> <p>3 Q. For the \$30.7 million note, to the</p> <p>4 best of your knowledge, did the debtor</p> <p>5 maintain a payment ledger showing any</p> <p>6 historical payments on that \$30.7 million</p> <p>7 note?</p> <p>8 A. Yes, we would have -- we would</p> <p>9 have.</p> <p>10 Q. And to the best of your knowledge,</p> <p>11 would that have been produced in this</p> <p>12 litigation?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. To the best of your</p> <p>15 knowledge, is Exhibit 7 that or is Exhibit 7</p> <p>16 something else?</p> <p>17 A. I think Exhibit 7 is something</p> <p>18 else. It's just because I hadn't seen this</p> <p>19 one. It may be that this was -- I think</p> <p>20 it's -- I think it's something else.</p> <p>21 RQ* MR. RUKAVINA: Okay. Mr. Morris,</p> <p>22 I'll just ask the debtor, I've -- I've</p> <p>23 asked and we only got this in PDF,</p> <p>24 there's no metadata.</p> <p>25 I would just ask if the debtor</p>	<p style="text-align: right;">Page 251</p> <p>1 J. Seery</p> <p>2 would be willing to please check to see</p> <p>3 what the native of this Exhibit 7 is and</p> <p>4 please send it to me, along with any</p> <p>5 metadata.</p> <p>6 MR. MORRIS: Email that exhibit</p> <p>7 to me --</p> <p>8 MR. RUKAVINA: I will.</p> <p>9 MR. MORRIS: -- and I'll be able</p> <p>10 to do that, but I do know that if you</p> <p>11 look -- I'm certain it was in one of</p> <p>12 the supplemental productions.</p> <p>13 MR. RUKAVINA: Yes, we received</p> <p>14 it recently.</p> <p>15 MR. MORRIS: Right. So in one of</p> <p>16 the supplemental productions I know</p> <p>17 that we produced schedules showing all</p> <p>18 payments made against all notes at</p> <p>19 issue, and I think we even gave you the</p> <p>20 backup with the bank statements, you</p> <p>21 know, fully redacted -- yeah.</p> <p>22 MR. MORRIS: -- to show only the</p> <p>23 payments --</p> <p>24 MR. RUKAVINA: Let's talk</p> <p>25 offline --</p>
<p style="text-align: right;">Page 252</p> <p>1 J. Seery</p> <p>2 (Simultaneous speaking.)</p> <p>3 MR. MORRIS: -- you've got all of</p> <p>4 that.</p> <p>5 MR. RUKAVINA: Let's talk</p> <p>6 offline, because I'm not sure that I</p> <p>7 agree we have that --</p> <p>8 MR. MORRIS: Yeah.</p> <p>9 MR. RUKAVINA: -- but if the</p> <p>10 debtors produced it, then we'll --</p> <p>11 MR. MORRIS: I know I instructed</p> <p>12 my team to produce it, so I -- I'm --</p> <p>13 MR. RUKAVINA: Okay.</p> <p>14 MR. MORRIS: -- I'm pretty</p> <p>15 confident they did what I asked.</p> <p>16 MR. RUKAVINA: That was all I</p> <p>17 had. Thank you, sir.</p> <p>18 THE WITNESS: Thank you.</p> <p>19 MS. DEITSCH-PEREZ: Okay. Let me</p> <p>20 follow up with that -- with the</p> <p>21 witness. And then if it's really a</p> <p>22 conversation with counsel, we could</p> <p>23 move it on to that.</p> <p>24 EXAMINATION</p> <p>25 BY MS. DEITSCH-PEREZ:</p>	<p style="text-align: right;">Page 253</p> <p>1 J. Seery</p> <p>2 Q. But to your knowledge, were the</p> <p>3 native files such as spreadsheets and emails</p> <p>4 provided to counsel to produce them, such</p> <p>5 that we should be able to see the Word</p> <p>6 versions of the notes, any emails about the</p> <p>7 notes and about the payments, so --</p> <p>8 MR. MORRIS: You -- you've got</p> <p>9 that. That's not for this witness. We</p> <p>10 can talk about that offline. He</p> <p>11 doesn't know anything about like the</p> <p>12 actual --</p> <p>13 Q. Well, let -- let me just ask him.</p> <p>14 Did he provide the native files to</p> <p>15 counsel?</p> <p>16 A. I'm not quite sure what you mean by</p> <p>17 native files, but counsel had access to -- we</p> <p>18 did full -- had access to the systems, and we</p> <p>19 did full data review of the systems and</p> <p>20 produced everything responsive.</p> <p>21 So I'm not sure exactly what you</p> <p>22 mean by that, but -- but certainly counsel</p> <p>23 had access to -- to those --</p> <p>24 (Simultaneous speaking.)</p> <p>25 Q. -- understand that -- that native</p>

<p style="text-align: right;">Page 254</p> <p>1 J. Seery</p> <p>2 files means a document, if it's in Excel,</p> <p>3 providing it in Excel; or if it's in email,</p> <p>4 providing it as a -- in a -- in email format,</p> <p>5 a PST format or something that will show the</p> <p>6 metadata; or if it's a Word document, in --</p> <p>7 in Word, with its properties showing.</p> <p>8 That's -- that's what I mean. Do</p> <p>9 you know if that was done?</p> <p>10 A. Counsel certainly had access to all</p> <p>11 of that. We didn't just PDF things and send</p> <p>12 them to counsel. It was done electronically.</p> <p>13 So anything on the system responsive was --</p> <p>14 was accessible.</p> <p>15 Q. Okay. And just who is the person</p> <p>16 who conducted the searches to respond to</p> <p>17 discovery requests?</p> <p>18 A. It would have been through the</p> <p>19 Pachulski firm, you know, working in -- with</p> <p>20 outside -- either DSI or one of the outside</p> <p>21 providers, to go through and -- and find</p> <p>22 certain -- whatever the terms they came up</p> <p>23 with to find the data.</p> <p>24 Q. And do you know who the actual</p> <p>25 people were that -- that did the -- the</p>	<p style="text-align: right;">Page 255</p> <p>1 J. Seery</p> <p>2 searching?</p> <p>3 A. At Pachulski? I don't -- I should</p> <p>4 know, but I worked mostly through John.</p> <p>5 Q. Okay. And then what about the</p> <p>6 non-lawyers; who were the non-lawyers who</p> <p>7 worked on collecting materials responsive to</p> <p>8 the discovery requests?</p> <p>9 A. I believe -- at third parties or</p> <p>10 at --</p> <p>11 (Simultaneous speaking.)</p> <p>12 Q. -- you just mentioned DSI or I</p> <p>13 mean --</p> <p>14 A. DSI --</p> <p>15 Q. -- anyone other than the lawyer --</p> <p>16 outside lawyers.</p> <p>17 A. Yeah, DSI. The outside firm, ISI.</p> <p>18 I don't know if Robert Half was involved in</p> <p>19 some of this production as well. He's been</p> <p>20 on --</p> <p>21 MR. MORRIS: Robert Half does</p> <p>22 document review.</p> <p>23 A. -- the payroll for a long time now</p> <p>24 during this case.</p> <p>25 MR. MORRIS: They do -- they do</p>
<p style="text-align: right;">Page 256</p> <p>1 J. Seery</p> <p>2 the document review.</p> <p>3 I mean, I could just -- I could</p> <p>4 just represent to you that -- that we</p> <p>5 came up with search terms, my firm ran</p> <p>6 the searches. There may have been</p> <p>7 certain financial data that we had to get</p> <p>8 from DSI, but we produced whatever came</p> <p>9 up with the search terms to -- to Robert</p> <p>10 Half.</p> <p>11 They -- they did their review, they</p> <p>12 sent the documents to us. We did a</p> <p>13 little quality control and we produced</p> <p>14 it.</p> <p>15 Q. Okay. And are -- are you</p> <p>16 confident, Mr. Seery, that you have looked</p> <p>17 for and produced whatever documents there</p> <p>18 are that concern the -- the loan payments due</p> <p>19 and made at the end of 2020, beginning of</p> <p>20 2021?</p> <p>21 A. I -- I am. It was done in the</p> <p>22 same -- same manner that -- that Mr. Morris</p> <p>23 just described.</p> <p>24 MR. MORRIS: Yeah. And I would</p> <p>25 again encourage you guys -- I've asked</p>	<p style="text-align: right;">Page 257</p> <p>1 J. Seery</p> <p>2 probably five different ways in</p> <p>3 interrogatories, in emails, if you</p> <p>4 actually think there's something out</p> <p>5 there, instead of just fishing, you</p> <p>6 should let me know if you think that</p> <p>7 there's --</p> <p>8 MR. RUKAVINA: Oh, oh, no, and I</p> <p>9 do think --</p> <p>10 MR. MORRIS: Yeah, I mean --</p> <p>11 (Simultaneous speaking.)</p> <p>12 MR. MORRIS: I've asked so many</p> <p>13 times and -- and I --</p> <p>14 MR. RUKAVINA: There's no --</p> <p>15 there's no need to have this on the</p> <p>16 record --</p> <p>17 MS. DEITSCH-PEREZ: Yeah, and</p> <p>18 Mr. Seery mentioned in -- in the course</p> <p>19 of the examination that they had not</p> <p>20 looked at the actual transfer</p> <p>21 documents, the -- I think the -- if</p> <p>22 there was a wire or an ACH, to see if</p> <p>23 there were notations on them and</p> <p>24 that --</p> <p>25 MR. MORRIS: He said he didn't.</p>

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1 J. Seery
2 THE WITNESS: I said I didn't.
3 MR. MORRIS: He said he didn't.
4 THE WITNESS: I said I didn't.
5 BY MS. DEITSCH-PEREZ:
6 Q. Well, do you know if anybody did?
7 A. I don't know, but certainly that's
8 something that accounting would see rather
9 easily.
10 RQ* MS. DEITSCH-PEREZ: Okay. So I
11 would like confirmation that that was
12 looked for, and -- and the same as I
13 requested previously, the Word versions
14 of -- of the notes.
15 MR. MORRIS: Okay.
16 THE WITNESS: I, I -- I think
17 that the materials that Mr. Morris
18 described has all that with bank
19 statements.
20 MR. MORRIS: It's okay, thank
21 you.
22 Are we done?
23 MS. DEITSCH-PEREZ: Thank you.
24 MR. MORRIS: Yep.
25 MS. DEITSCH-PEREZ: Yes.

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1
2 C E R T I F I C A T E
3
4 STATE OF NEW YORK)
5)ss.:
6 COUNTY OF NEW YORK)
7
8 I, MARIANNE WITKOWSKI-SMITH, a Notary
9 Public within and for the State of New York,
10 do hereby certify:
11 That JAMES P. SEERY, JR., the witness
12 whose deposition is hereinbefore set forth,
13 was duly sworn by me and that such deposition
14 is a true record of the testimony given by
15 the witness.
16 I further certify that I am not
17 related to any of the parties to this action
18 by blood or marriage, and that I am in no
19 way interested in the outcome of this
20 matter.
21 IN WITNESS WHEREOF, I have hereunto
22 set my hand this 22nd day of October, 2021.
23 
24 _____
25 MARIANNE WITKOWSKI-SMITH

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1 J. Seery
2 VIDEO TECHNICIAN: The time is
3 6:49. This concludes today's
4 deposition, Thursday, October 21, 2021.
5
6
7
8
9
10 I, _____, do hereby certify under
11 penalty of perjury that I have read the foregoing
12 transcript of my deposition taken on _____;
13 that I have made such corrections as appear noted
14 herein in ink, initialed by me; that my testimony as
15 contained herein, as corrected, is true and correct.
16
17 DATED this ____ day of _____, 20____,
18 at _____, _____.
19
20
21
22
23 _____
24 JAMES P. SEERY, JR.
25

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1
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12 258 Transfer documents notations and
Word versions of notes.
13
14
15 -----EXHIBITS-----
16 EXHIBIT PAGE LINE
17 Exhibit 1
Notice of Deposition
18 Seery 8 20
19 Exhibit 2
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20 30(b)(6) 9 20
21 Exhibit 3
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22 Re: HCMLP Roles 23 20
23 Exhibit 4
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24 Motion for TRO 43 9
25 (Continued on Next Page)

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4	Promissory Note	
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6	Exhibit 6	
7	Correspondence	
8	Dated January 7, 2021	69 16
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ERRATA SHEET

1 Case Name:

2 Deposition Date:

3 Deponent:

4 Pg.	No.	Now Reads	Should Read	Reason
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6	---	---	---	---
7	---	---	---	---
8	---	---	---	---
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10	---	---	---	---
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14	---	---	---	---
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16	---	---	---	---
17	---	---	---	---
18	---	---	---	---
19	---	---	---	---
20	---	---	---	---

21 _____
Signature of Deponent

22 SUBSCRIBED AND SWORN BEFORE ME

23 THIS ____ DAY OF _____, 2021.

24 _____

25 (Notary Public) MY COMMISSION EXPIRES: _____

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Exhibit B

McGovern - 11-9-2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:)
)
HIGHLAND CAPITAL) Case No.
MANAGEMENT, LP,) 19-34054 L.P.
) Chapter 11
Debtor,)
-----)
HIGHLAND CAPITAL MANAGEMENT,)
LP,)
)
Plaintiff,) Adversary No.
) 21-03003-sgi
vs.)
)
JAMES D. DONDERO,)
)
Defendant.)

REMOTE DEPOSITION OF

BRUCE MCGOVERN

Houston, Texas

Tuesday, 9th day of November, 2021

Reported by:

Daniel J. Skur, Notary Public and CSR

Job No. 202067

<p style="text-align: right;">Page 2</p> <p>McGovern - 11-9-2021</p> <p>9th day of November, 2021</p> <p>10:01 a.m. - 10:34 a.m.</p> <p>Remote Deposition of BRUCE MCGOVERN, located in Houston, Texas, before Daniel J. Skur, Notary Public and Certified Shorthand Reporter in and for the State of Texas located in Waxahachie, Texas.</p>	<p style="text-align: right;">Page 3</p> <p>McGovern - 11-9-2021</p> <p>A P P E A R A N C E S:</p> <p>Pachulski Stang Ziehl & Jones</p> <p>Attorney(s) for Debtor</p> <p>780 Third Avenue</p> <p>New York, New York 10017</p> <p>By: John Morris, Esq.</p> <p>Stinson</p> <p>Attorney(s)for James Dondero, HCMS and HCRE</p> <p>3102 Oak Lawn Avenue</p> <p>Dallas, Texas 75219</p> <p>By: Michael Aigen, Esq.</p> <p>ALSO PRESENT:</p> <p>La Asia Canty, Paralegal</p> <p>Haley Winograd</p>
<p style="text-align: right;">Page 4</p> <p>McGovern - 11-9-2021</p> <p>IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.</p> <p>IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.</p> <p>IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.</p> <p style="text-align: center;">- oOo -</p>	<p style="text-align: right;">Page 5</p> <p>McGovern - 11-9-2021</p> <p>P R O C E E D I N G S</p> <p>REMOTE ORAL DEPOSITION OF</p> <p>BRUCE MCGOVERN</p> <p>(REPORTER NOTE: This deposition is being conducted remotely in accordance with the Current Emergency Order regarding the COVID-19 State of Disaster.</p> <p>Today's date is the 9th day of November, 2021. The time is 10:01 a.m. Daylight Savings Time. The witness is located in Houston, Texas.)</p> <p>BRUCE ALLEN MCGOVERN, having been duly cautioned sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:</p> <p>(10:01 a.m.)</p> <p>EXAMINATION</p> <p>BY MR. MORRIS:</p> <p>Q. Could you please state your name for the record?</p> <p>A. My name is Bruce Allen McGovern.</p> <p>Q. Good morning, Mr. McGovern. My name is John Morris. I'm an attorney at Pachulski Stang Ziehl & Jones. We are counsel to</p>

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2 Highland Capital Management, LP, a company that

3 has been reorganized following its bankruptcy

4 in Texas.

5 Are you aware of the bankruptcy?

6 A. Yes, I am.

7 Q. Okay. And we're here today for your

8 deposition; is that right?

9 A. Yes, that's correct.

10 Q. And you've been deposed on a number

11 of occasions in your professional capacity.

12 Do I have that right?

13 A. I believe there have been three

14 occasions, yes.

15 Q. Okay. So I'm not going to ask you

16 about those occasions. I want to try to get

17 this done as quickly as we can.

18 I'll just tell you that -- I don't

19 know if any of those occasions were remote

20 depositions, but remote depositions are

21 particularly difficult, only because we're not

22 in the same room.

23 From time to time, we'll put

24 documents on the screen. If there's anything

25 that you need to see, will you please let me

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2 And after discussing that with him, I agreed to

3 serve as an expert witness.

4 Q. And what exactly were you asked to

5 do?

6 A. I was asked to prepare a report on a

7 specific legal issue that has to do with the

8 structure of some loans from Highland Capital

9 Management, LP, to Mr. Dondero and subsequently

10 to -- I understand there were similar loans to

11 entities controlled by Mr. Dondero.

12 Q. When we use the phrase "Highland"

13 today, can we agree that we're specifically

14 referring to Highland Capital Management, LP?

15 A. Yes, that's fine.

16 Q. Okay. When you were told about the

17 nature of the litigation, do you recall whether

18 you were informed that Mr. Dondero had already

19 filed an answer to the complaint?

20 A. Yes. I was informed of that, and I

21 was provided with copies -- at least at that

22 time, copies of the promissory notes that he

23 had signed and also the complaint by Highland

24 Capital against Mr. Dondero as well as the copy

25 of the amended answer in the litigation.

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2 know that? And we'll scroll down to the

3 portions that you think you need to see.

4 Is that okay?

5 A. Yes, I will.

6 Q. And if there's anything that I ask

7 that you don't understand, will you let me know

8 that?

9 A. Yes, I will.

10 Q. Okay. You were retained by the

11 Stinson firm to provide expert testimony on

12 behalf of James Dondero; is that correct?

13 A. Yes, that's correct.

14 Q. Okay. And when were you retained?

15 A. I was retained sometime at the

16 beginning of 2021, I believe. I don't recall

17 the exact date, but it was in the first few

18 months of 2021.

19 Q. How did it come -- how did your

20 retention come about?

21 A. I received a phone call, I believe,

22 from Michael Aigen, who is here today; and he

23 discussed with me the general nature of the

24 underlying litigation and the issue on which he

25 and his firm were seeking expert testimony.

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2 Q. Okay. So -- so you were given a

3 copy of the amended answer that he filed at the

4 time that you were retained? Do I have that

5 right?

6 A. That's correct.

7 Q. So you couldn't have been retained

8 before the time the amended answer was filed;

9 is that fair?

10 A. I'm just thinking through your

11 question, so... That's correct. That's

12 correct.

13 Q. Okay. Have you ever been retained

14 by the Stinson firm before your engagement in

15 this case?

16 A. No, I have not.

17 Q. Okay. Have you ever provided any

18 services to Highland before?

19 A. No, I have not.

20 Q. Have you ever met James Dondero?

21 A. No, I have never met him.

22 Q. Have you ever spoken with him?

23 A. No, I have not.

24 Q. So your report is not based in any

25 way on anything Mr. Dondero has told you; is

<p style="text-align: right;">Page 10</p> <p>1 McGovern - 11-9-2021</p> <p>2 that fair?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay. And I want to go a little bit</p> <p>5 broader. I think I used the words whether</p> <p>6 you -- I'd asked whether you had spoken with</p> <p>7 him.</p> <p>8 So let me ask a different question:</p> <p>9 Have you ever communicated with Mr. Dondero by</p> <p>10 email or otherwise?</p> <p>11 A. No. I've never had any</p> <p>12 communications with him.</p> <p>13 Q. Is it fair to say that all of your</p> <p>14 communications relating to the work that you've</p> <p>15 done in this lawsuit have been exclusively with</p> <p>16 one or more lawyers from the Stinson firm?</p> <p>17 A. Yes, that's correct.</p> <p>18 Q. Okay. Have you ever communicated</p> <p>19 with anybody else regarding any of the work</p> <p>20 that you've done in connection with this</p> <p>21 engagement other than lawyers from the Stinson</p> <p>22 firm?</p> <p>23 A. No. I have not.</p> <p>24 Q. Okay. I'm going to ask you --</p> <p>25 MR. AIGEN: John.</p>	<p style="text-align: right;">Page 11</p> <p>1 McGovern - 11-9-2021</p> <p>2 MR. MORRIS: Yes.</p> <p>3 MR. AIGEN: I just want to point</p> <p>4 something out. The witness may not be</p> <p>5 aware that one of our conversations, Dan</p> <p>6 Elms was listening, I believe.</p> <p>7 Actually, I apologize. I may be</p> <p>8 convincing -- confusing this with other</p> <p>9 witnesses. Dan Elms is not a lawyer at our</p> <p>10 firm. Now that I'm saying that, I actually</p> <p>11 may be confusing it with conversations with</p> <p>12 our other expert, so...</p> <p>13 A. I don't recall him being in any of</p> <p>14 our discussions.</p> <p>15 MR. AIGEN: I apologize. I probably</p> <p>16 should just be quiet.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. I'm going to ask my colleague, La</p> <p>19 Asia Canty, to put on the screen a copy of your</p> <p>20 report, which has been premarked as Exhibit 61.</p> <p>21 (Exhibit 61 introduced.)</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. And can you see that, sir?</p> <p>24 A. Yes, I can.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 12</p> <p>1 McGovern - 11-9-2021</p> <p>2 MR. MORRIS: And if we could just</p> <p>3 scroll to the last page, the signature</p> <p>4 line.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. And that's your signature, sir?</p> <p>7 A. Yes, it is.</p> <p>8 Q. And did you sign this on or around</p> <p>9 May 28th, 2021?</p> <p>10 A. Yes, I did.</p> <p>11 MR. MORRIS: You can go back to the</p> <p>12 top.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. As you sit here today, is there</p> <p>15 anything that you believe is inaccurate about</p> <p>16 your report?</p> <p>17 A. No.</p> <p>18 Q. Is there anything that you believe</p> <p>19 should be modified to state more clearly the</p> <p>20 opinions and the bases for them, as set forth</p> <p>21 in this report?</p> <p>22 A. No.</p> <p>23 Q. Your report has not been amended or</p> <p>24 supplemented in any way, correct?</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">Page 13</p> <p>1 McGovern - 11-9-2021</p> <p>2 MR. MORRIS: If we can scroll down a</p> <p>3 little bit.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. You reviewed five documents for</p> <p>6 purposes of preparing your report. Do I have</p> <p>7 that right?</p> <p>8 A. Yes, that's correct.</p> <p>9 Q. Okay. And it's those five documents</p> <p>10 that are listed in the first page of your</p> <p>11 report, right?</p> <p>12 A. Yes, that's correct.</p> <p>13 Q. Okay. Since signing this report on</p> <p>14 May 28th, 2021, have you been provided with any</p> <p>15 additional documents that relate in any way to</p> <p>16 your opinions?</p> <p>17 A. I've been provided with copies of</p> <p>18 the promissory notes that were executed on</p> <p>19 behalf of some of the entities controlled by</p> <p>20 Mr. Dondero in favor of Highland Capital, and I</p> <p>21 believe I also have a copy of the complaint in</p> <p>22 the adversary proceeding filed against the</p> <p>23 entities.</p> <p>24 Q. When were you given those documents?</p> <p>25 A. I was provided those documents, I</p>

<p style="text-align: right;">Page 14</p> <p>1 McGovern - 11-9-2021</p> <p>2 believe, sometime last week.</p> <p>3 Q. And to confirm, those documents</p> <p>4 haven't caused you to change your opinions as</p> <p>5 set forth in your report in any way, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Did you have any discussion with</p> <p>8 anybody about why you weren't given those</p> <p>9 documents before you completed your report on</p> <p>10 May 28th?</p> <p>11 A. No. I was not provided any</p> <p>12 explanation of that. What did occur is that I</p> <p>13 met with attorneys from the Stinson law firm to</p> <p>14 discuss the deposition today; and following</p> <p>15 that conversation, I was sent by email copies</p> <p>16 of the additional documents.</p> <p>17 Q. Okay. But you don't recall having</p> <p>18 any discussion about why you hadn't been given</p> <p>19 copies of those documents before you completed</p> <p>20 your report on May 28th, 2021, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. Were you ever given any</p> <p>23 information concerning Highland's treatment of</p> <p>24 the loans on Highland's books and records?</p> <p>25 A. No, I was not.</p>	<p style="text-align: right;">Page 15</p> <p>1 McGovern - 11-9-2021</p> <p>2 Q. Did you ever ask for any information</p> <p>3 concerning Highland's treatment of the loans in</p> <p>4 its books and records?</p> <p>5 A. No, I did not.</p> <p>6 Q. Is Highland's treatment of the loans</p> <p>7 in its books and records relevant at all to</p> <p>8 your opinions as set forth in Exhibit 61?</p> <p>9 A. No, I don't believe it is.</p> <p>10 Q. Were you given copies of Highland's</p> <p>11 audited financial statements?</p> <p>12 A. No, I was not. I've discussed</p> <p>13 already all of the documents that I was</p> <p>14 provided to you, both to prepare the report and</p> <p>15 that I was provided subsequent to the report.</p> <p>16 Q. Did you ask to see Highland's</p> <p>17 audited financial statements?</p> <p>18 A. No, I did not.</p> <p>19 Q. Is it fair to say that the treatment</p> <p>20 of the loans in Highland's audited financial</p> <p>21 statements is irrelevant to your opinions as</p> <p>22 set forth in Exhibit 61?</p> <p>23 A. Yes. I think that's a fair</p> <p>24 assessment.</p> <p>25 Q. Did you ask for any documents that</p>
<p style="text-align: right;">Page 16</p> <p>1 McGovern - 11-9-2021</p> <p>2 are not listed in your report?</p> <p>3 A. No, I did not.</p> <p>4 Q. So is it fair to say that you never</p> <p>5 looked at any documents that were filed in</p> <p>6 Highland's bankruptcy case?</p> <p>7 A. The only documents I've looked at</p> <p>8 that were filed in the bankruptcy case are the</p> <p>9 complaint and the amended answer.</p> <p>10 Q. And you never asked for any</p> <p>11 documents that were filed in the bankruptcy</p> <p>12 case other than the documents set forth in your</p> <p>13 report, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. As a general matter, is Highland's</p> <p>16 treatment of the loans relevant at all to your</p> <p>17 opinions?</p> <p>18 A. No, it's not, because I was asked to</p> <p>19 make certain assumptions in connection with</p> <p>20 preparing my report.</p> <p>21 Q. Okay. Can you identify any of the</p> <p>22 promissory notes that you were given in the</p> <p>23 last week or so?</p> <p>24 A. Off the top of my head, I can't.</p> <p>25 I'd have to look in my files, but I recall, for</p>	<p style="text-align: right;">Page 17</p> <p>1 McGovern - 11-9-2021</p> <p>2 example, that there were promissory notes</p> <p>3 signed by a few different entities controlled</p> <p>4 by Mr. Dondero that were organized in different</p> <p>5 forms.</p> <p>6 One, I believe, was HCE, but I can't</p> <p>7 recall off the top of my head if that was a</p> <p>8 limited partnership or a corporation.</p> <p>9 Q. I take it that you have never seen</p> <p>10 any of Mr. Dondero's written responses to</p> <p>11 Highland's discovery requests?</p> <p>12 A. That is correct.</p> <p>13 Q. Have you ever seen any transcripts</p> <p>14 from any depositions that have been given in</p> <p>15 these adversary proceedings?</p> <p>16 A. No, I have not.</p> <p>17 Q. Have you ever asked to see any</p> <p>18 transcripts of any depositions that were given</p> <p>19 in these adversary proceedings?</p> <p>20 A. No, I have not.</p> <p>21 Q. Okay. So your opinions don't take</p> <p>22 into account any of the testimony that was</p> <p>23 adduced in any depositions that were given in</p> <p>24 these adversary proceedings, correct?</p> <p>25 A. That's correct.</p>

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2 Q. Okay.

3 MR. MORRIS: If we could turn to the

4 assumptions.

5 Okay. Right there is fine.

6 BY MR. MORRIS:

7 Q. So you were asked to assume the

8 facts that are set forth in the five numbered

9 paragraphs on this page, correct?

10 A. Yes, that's correct.

11 Q. Okay. And, in fact, you satisfied

12 yourself, have you not, that Assumed Fact

13 Number 1 is actually true, correct?

14 A. That is an assumption.

15 MR. AIGEN: Objection, form.

16 A. I don't have any basis for -- for

17 example, identifying that that's actually

18 Mr. Dondero's signature; but I was asked to

19 assume that for purposes of the report, that he

20 had signed these promissory notes.

21 BY MR. MORRIS:

22 Q. Did anybody tell you that

23 Mr. Dondero disputed his execution of the three

24 promissory notes that were given to you?

25 A. No.

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2 A. No, I did not.

3 Q. And that's because you were just

4 asked to assume that the subsequent agreement

5 existed, correct?

6 A. It's because I was asked to assume

7 that there was an oral agreement, and normally

8 there would be no documentation of an oral

9 agreement.

10 Q. Okay. It's possible that after

11 somebody enters into an oral agreement,

12 somebody makes a note to -- to write down the

13 terms that were agreed to; isn't that fair?

14 A. Yes, that's possible.

15 Q. Okay. And in your expertise, would

16 you expect somebody to -- withdrawn.

17 Do you know when the subsequent --

18 withdrawn.

19 I'm going to use the phrase

20 "subsequent agreement" to refer to the

21 agreement that's described in Assumption Number

22 2. Is that okay?

23 A. Yes, that's fine.

24 Q. Okay. Do you know when the

25 subsequent agreement was entered into?

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2 Q. Okay. Let's look at the second

3 assumed fact.

4 It says, quote: Subsequent to

5 Mr. Dondero's execution of the notes, but

6 before Highland Capital made demand for payment

7 of the notes, Highland Capital and Mr. Dondero

8 entered into an oral agreement, which I think

9 you're defining there as "the subsequent

10 agreement."

11 Have I read that correctly?

12 A. Yes, that is correct.

13 Q. Have you been given any document --

14 withdrawn.

15 Have you been given any documentary

16 evidence concerning the subsequent agreement?

17 A. No, I have not.

18 Q. Do you know whether -- has anybody

19 ever informed you whether such documentation

20 exists?

21 A. Nobody has ever suggested that to

22 me.

23 Q. Okay. Did you ask to see any

24 documents concerning the existence of the

25 subsequent agreement?

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2 A. I don't know the exact date. I was

3 asked to assume only that it had occurred after

4 the execution of the original promissory notes.

5 Q. Were you asked to make any

6 assumptions concerning the number of subsequent

7 agreements that were entered into between

8 Mr. Dondero and Highland Capital?

9 A. I'm sorry, could you -- could you

10 restate that?

11 Q. Were you asked to assume that there

12 was one subsequent agreement between Highland

13 Capital and Mr. Dondero or more than one

14 subsequent agreement between Highland Capital

15 and Mr. Dondero?

16 A. My assumption has been that there

17 was only a single oral agreement; however,

18 given that there were multiple promissory

19 notes, it's conceivable that there could have

20 been separate oral agreements for each note.

21 But, in general, I've been assuming a single

22 oral agreement that applied to all of the

23 notes.

24 Q. And you don't have any personal

25 knowledge regarding the number of subsequent

<p style="text-align: right;">Page 22</p> <p>1 McGovern - 11-9-2021</p> <p>2 agreements that may exist, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And you weren't asked to assume that</p> <p>5 more than one subsequent agreement existed,</p> <p>6 correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And when you prepared your report,</p> <p>9 the assumption that you made was that there was</p> <p>10 only one subsequent agreement, correct?</p> <p>11 A. Yes, the subsequent agreement to</p> <p>12 which I refer in my report.</p> <p>13 Q. Okay. Do you know who entered the</p> <p>14 subsequent agreement on behalf of Highland</p> <p>15 Capital?</p> <p>16 A. No, I do not.</p> <p>17 Q. Do you know if the subsequent</p> <p>18 agreement was ever disclosed to Highland</p> <p>19 Capital's outside auditors?</p> <p>20 A. No, I do not.</p> <p>21 Q. Is it fair to say that the</p> <p>22 circumstances surrounding the entry into the</p> <p>23 subsequent agreement are not relevant to your</p> <p>24 opinions as set forth in Exhibit 61?</p> <p>25 A. Yes, that's correct, because I'm</p>	<p style="text-align: right;">Page 23</p> <p>1 McGovern - 11-9-2021</p> <p>2 assuming only that there was a subsequent</p> <p>3 agreement that occurred after the execution of</p> <p>4 the notes, but before demand for payment on the</p> <p>5 notes had been made.</p> <p>6 Q. So you're not offering any opinion</p> <p>7 that the subsequent agreement actually exists,</p> <p>8 correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And you're not offering any opinion</p> <p>11 that the terms of the subsequent agreement were</p> <p>12 reasonable, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. You're not offering any opinion that</p> <p>15 the subsequent agreement was fair to both</p> <p>16 parties, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And you're not offering any opinion</p> <p>19 that the person who entered into the subsequent</p> <p>20 agreement on behalf of Highland Capital</p> <p>21 fulfilled his or her or its duties, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Are you offering any opinion at all</p> <p>24 about the subsequent agreement?</p> <p>25 MR. AIGEN: Objection, form.</p>
<p style="text-align: right;">Page 24</p> <p>1 McGovern - 11-9-2021</p> <p>2 A. I'm offering an opinion only about</p> <p>3 the effect of the subsequent agreement,</p> <p>4 assuming that the subs- -- subsequent agreement</p> <p>5 is as I described in my report.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Okay. What if I asked you to assume</p> <p>8 that there was no subsequent agreement? Would</p> <p>9 that change your opinions?</p> <p>10 MR. AIGEN: Objection, form.</p> <p>11 A. It -- it would not change my</p> <p>12 ultimate opinion, which is that there is no</p> <p>13 cancellation of indebtedness income for</p> <p>14 Mr. Dondero.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. And your opinion today is that</p> <p>17 there's no taxable income to Mr. Dondero</p> <p>18 because the conditions subsequent that you were</p> <p>19 asked to assume have not yet been satisfied; is</p> <p>20 that fair?</p> <p>21 A. That's correct. My opinion is that</p> <p>22 there was no income for him at the time of the</p> <p>23 original loans because of his obligation to</p> <p>24 repay, and that assuming the subsequent</p> <p>25 agreement occurred, that the subsequent</p>	<p style="text-align: right;">Page 25</p> <p>1 McGovern - 11-9-2021</p> <p>2 agreement did not change the outcome for him,</p> <p>3 that it -- it would not cause him to have</p> <p>4 income from the -- the loans.</p> <p>5 Q. And so if there is no subs- -- if I</p> <p>6 ask you to assume that there is no subsequent</p> <p>7 agreement, would your opinion be that</p> <p>8 Mr. Dondero therefore owes any unpaid principal</p> <p>9 and interest due under each of the notes that</p> <p>10 you've reviewed?</p> <p>11 A. Based on the -- my review of the</p> <p>12 promissory notes, yes, that the notes are</p> <p>13 demand notes in favor of Highland Capital.</p> <p>14 Q. Okay. Let's go to Assumed Fact</p> <p>15 Number 3. It states, quote: In the subsequent</p> <p>16 agreement between Highland Capital and</p> <p>17 Mr. Dondero, Highland Capital agreed that it</p> <p>18 would not collect on the notes unless certain</p> <p>19 conditions defined as "the conditions," could</p> <p>20 not be satisfied. In other words, Highland</p> <p>21 Capital agreed that the loans will be forgiven</p> <p>22 only if the conditions are satisfied.</p> <p>23 Do I have that right?</p> <p>24 A. Yes, that's correct.</p> <p>25 Q. Okay. And -- and -- and that -- all</p>

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2 of that -- everything in Number 3 is -- is an

3 assumption that you were asked to make in

4 rendering your opinion, correct?

5 A. Yes, that's correct.

6 Q. Do you know what the conditions

7 were?

8 A. I don't know the details of the

9 conditions. I was asked to assume only that

10 the conditions related to things beyond

11 Mr. Dondero's control, such as the sale of

12 certain assets above cost.

13 Q. Okay. That bleeds into the fourth

14 assumption, but I just want to stick with

15 Number 3 for the moment. Do you have any other

16 information about what the conditions were,

17 other than the sale of an asset above cost?

18 A. No, I do not.

19 Q. Did you ask any questions about the

20 nature, extent, and scope of the conditions?

21 A. Only if whether the conditions were

22 things beyond his control, but other than that,

23 I did not ask for details.

24 Q. Were you given any information

25 concerning the likelihood that the conditions

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2 Q. Okay. Let's move on to the fourth

3 assumed fact. It states, quote: Whether the

4 conditions are satisfied was not and is not

5 within Mr. Dondero's control because they

6 included the condition that certain portfolio

7 company assets be sold above cost or in a

8 manner outside of Mr. Dondero's control.

9 Have I read that correctly?

10 A. Yes, you did.

11 Q. What if the satisfaction of the

12 conditions was within Mr. Dondero's control?

13 If you make that assumption, how does your --

14 how do your opinions change, if at all?

15 A. I'm just thinking through your

16 question. If the conditions are within his

17 control, then that could potentially change the

18 outcome as to whether there was income from the

19 discharge of indebtedness, but in order to

20 provide an opinion on that, I would have to

21 know the details of the conditions; that is,

22 exactly what they are and how it is that he has

23 control over them.

24 Q. Okay. So are you aware that

25 Mr. Dondero controlled Highland prior to the

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2 would be satisfied?

3 A. No, I was not.

4 Q. Did you ask any -- did you ask for

5 any information concerning the likelihood that

6 the conditions would be satisfied?

7 A. No, I did not.

8 Q. Is it fair to say that the opinions

9 set forth in Exhibit 61 do not take into

10 account the likelihood that the conditions

11 would be satisfied?

12 A. I think that's an accurate

13 statement. The -- the only assumption is that

14 these conditions are things that will be beyond

15 Mr. Dondero's control and subject to

16 influences, such as market values.

17 Q. So the likelihood that the

18 conditions would be satisfied was not relevant

19 to your analysis, correct?

20 A. As far as probability, that's

21 correct.

22 Q. Okay. And you're not offering any

23 opinion as to the likelihood that any of the

24 conditions would be satisfied, correct?

25 A. That's correct.

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2 bankruptcy?

3 A. Yes, I am.

4 Q. Are you aware that he had -- I'll --

5 I'll ask you to assume that he had the

6 authority to buy and sell assets on behalf of

7 Highland. Can you -- can you accept that

8 assumption?

9 A. Yes.

10 Q. Okay. If you -- if you accept that

11 assumption for purposes of my hypothetical, and

12 you also assume that the portfolio company

13 assets that are the subject of the conditions

14 were valued above cost at the time the

15 subsequent agreement was entered into, would

16 that impact your opinions if you assumed -- so

17 I'm asking you to really make just two

18 assumptions: Number one, Mr. Dondero had the

19 ability to sell the portfolio company assets

20 any time he wanted, and number two, that at the

21 time he entered into the subsequent agreement,

22 the value of the portfolio company assets was

23 above cost. How did those two assumptions, if

24 you -- if you accept them, how do they change

25 your analysis, if -- if at all?

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2 A. Assuming those two facts, they could

3 change the analysis of the issue of whether

4 Mr. Dondero had income from the cancellation of

5 indebtedness. The key question really is

6 whether Highland Capital, at the time of the

7 subsequent agreement, was actually agreeing to

8 cancel the loans at that time, or was it

9 agreeing in the future to cancel the loans if

10 certain conditions occurred?

11 If those conditions are within the

12 control of Mr. Dondero and in effect already in

13 place, then it's quite possible that he would

14 have had income from the discharge of

15 indebtedness at that time because the loans in

16 fact had been forgiven.

17 Q. But you weren't ass- -- you weren't

18 asked to assume that Highland placed any

19 condition on the timing of the forgiveness,

20 correct?

21 A. That's correct.

22 Q. And -- and you, in fact, were asked

23 to assume that if the portfolio company assets

24 were sold above cost, the loans would be

25 forgiven, correct?

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2 from the cancellation of indebtedness, but if

3 that's true, that means that the loans actually

4 had been forgiven at that time.

5 MR. MORRIS: I have no further

6 questions.

7 MR. AIGEN: I have one thing to

8 clear up, I think.

9 EXAMINATION

10 BY MR. AIGEN:

11 Q. Early on in the deposition, when

12 asked what your assignment was, you mentioned

13 that you were providing an opinion on a legal

14 issue. I just want to make sure, you we- --

15 you're not sitting here today opining on the

16 law. You're applying certain facts to the law;

17 is that correct?

18 A. That's correct. I am taking an

19 assumed set of facts, and I've been asked to

20 provide an opinion on what is the outcome on a

21 particular legal issue as app- -- applying the

22 law to those facts, that's correct.

23 MR. AIGEN: Okay. That's all I

24 have, John.

25 MR. MORRIS: Okay. Thank you,

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2 A. That's correct. Although in -- in

3 fairness, as I've said, I don't know the

4 details of all the conditions, but was asked to

5 assume that they included the condition that

6 these assets be sold above cost.

7 Q. Yeah, I just want to focus on -- on

8 the assumptions that you were asked to make, so

9 let me give you a hypothetical. Let's say one

10 of the company assets was valued at \$50 million

11 on the date the subsequent agreement was

12 entered into, but that Highland's cost for

13 acquiring its interest in that asset was only

14 \$10 million, and Mr. Dondero had the ability to

15 sell that asset at -- at any time prior to the

16 bankruptcy filing.

17 Under that hypothetical, would

18 Mr. Dondero have to realize the income?

19 A. If he actually sold the assets, then

20 -- then yes.

21 Q. And what about if he didn't sell the

22 assets, but that it was within his control to

23 do so at any time?

24 A. It's possible that that could change

25 the outcome, as far as whether he had income

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2 professor. I appreciate your time and --

3 and -- and your attention.

4 THE WITNESS: All right. Thank you

5 so much.

6 MR. MORRIS: Okay. Have a good day.

7 THE WITNESS: Thank you.

8 MR. MORRIS: Bye, now.

9 THE REPORTER: Mr. Aigen, do you

10 need a copy of this deposition?

11 MR. AIGEN: If we can just get a

12 rough when one's available, and then we'll

13 take the original whenever it's due.

14 (Time Noted: 10:34 a.m.)

15

16

17

BRUCE MCGOVERN

18

19 Subscribed and sworn to before me

20 this ____ day of _____, 2021.

21

22

23


24

25

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2 C E R T I F I C A T E
3 STATE OF TEXAS)
4)
5 COUNTY OF ELLIS)

6 I, Daniel J. Skur, a Notary Public
7 within and for the State of Texas, do
8 hereby certify:
9 That BRUCE McGOVERN, the witness
10 whose deposition is hereinbefore set forth,
11 was duly sworn by me and that such
12 deposition is a true record of the
13 testimony given by such witness.
14 That pursuant to Rule 30 of the Federal
15 Rules of Civil Procedure, signature of the
16 witness was not reserved by the witness or
17 other party before the conclusion of the
18 deposition;
19 I further certify that I am not
20 related to any of the parties to this
21 action by blood or marriage; and that I am
22 in no way interested in the outcome of this
23 matter.
24 IN WITNESS WHEREOF, I have hereunto
25 set my hand this 9th day of November,
2021.



Daniel J. Skur
Notary Public, State of Texas.
My Commission Expires 7/7/2022
TSG Reporting, Inc.
228 East 45th Street, Suite 810
New York, New York
(877) 702-9580

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1 ERRATA SHEET

2 Case Name:
3 Deposition Date:
4 Deponent:

5 Pg.	No.	Now Reads	Should Read	Reason
6	---	---	---	---
7	---	---	---	---
8	---	---	---	---
9	---	---	---	---
10	---	---	---	---
11	---	---	---	---
12	---	---	---	---
13	---	---	---	---
14	---	---	---	---
15	---	---	---	---
16	---	---	---	---
17	---	---	---	---
18	---	---	---	---
19	---	---	---	---
20	---	---	---	---

21 _____
Signature of Deponent

22 SUBSCRIBED AND SWORN BEFORE ME
23 THIS ____ DAY OF _____, 2021.
24 _____
25 (Notary Public) MY COMMISSION EXPIRES: _____

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1 McGovern - 11-9-2021
2 -----I N D E X-----

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4 BRUCE McGOVERN		
5 Mr. Morris		5
6 Mr. Aigen		32
7		
8 *****		
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10	PAGE/LINE	
11 Exhibit 61 Expert Report of		11/21
12 Bruce McGovern		
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Exhibit C

Privileged and Confidential - Work Product

Notes Payable to
Highland

8-Apr-21

<u>Maker</u>	<u>Term</u>	<u>Amount Owed Per Lawsuit</u>	<u>Original Loan Amount</u>	<u>Loan Date</u>	<u>Adversary Proceeding</u>
Nexpoint Advisors	30 yr	23,071,195	\$30,746,812	5/31/2017	21-3005
HCM Services	30 yr	6,757,249	\$20,247,628	5/31/2017	21-3006
HCM Services	Demand	947,519	150,000.00	3/26/2018	21-3006
			200,000.00	6/25/2018	21-3006
			400,000.00	5/29/2019	21-3006
			150,000.00	6/26/2019	21-3006
JD	Demand	9,004,013	\$3,825,000	2/2/2018	21-3003
			\$2,500,000	8/1/2018	21-3003
			\$2,500,000	8/13/2018	21-3003
HCRE	30 yr	6,145,467	\$6,059,832	5/31/2017	21-3007
HCRE	Demand	5,012,261	100,000.00	11/27/2013	21-3007
			2,500,000.00	10/12/2017	21-3007
			750,000.00	10/15/2018	21-3007
			900,000.00	9/25/2019	21-3007
		<u>50,937,704</u>			

Exhibit D

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>

To: Kristin Hendrix <KHendrix@HighlandCapital.com>

Subject: RE: Wires for today

Date: Wed, 25 Nov 2020 10:01:23 -0600

Importance: Normal

Inline-Images: image001.jpg

ok

From: Kristin Hendrix

Sent: Wednesday, November 25, 2020 10:01 AM

To: Frank Waterhouse

Subject: Wires for today

HCM

AT&T USD 2,845.06

Grubhub USD 1,422.24

HCMFA

HCM Insurance

Acct USD 17,373.85 Dec premiums

NPA

HCM Insurance

Acct USD 38,453.01 Dec premiums

UMB Bank USD 355.31

HCED Operating

HCMFA USD 61,691.00 Shared Services

HCM Insurance

Acct USD 51,779.84 Dec premiums

Eagle Equity

HCM Insurance

Acct USD 2,323.63 Dec premiums

Okay to release?

Kristin Hendrix, CPA | Assistant Controller



300 Crescent Court | Suite 700 | Dallas, Texas 75201

O 972.628.4127 | F: 972.628.4147

khendrix@highlandcapital.com | www.highlandcapital.com

Exhibit A1

App. 204
ACL-019692

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>

To: Kristin Hendrix <KHendrix@HighlandCapital.com>

Subject: RE: Wires for today

Date: Mon, 30 Nov 2020 10:45:44 -0600

Importance: Normal

Inline-Images: image001.jpg

ok

From: Kristin Hendrix

Sent: Monday, November 30, 2020 10:46 AM

To: Frank Waterhouse

Subject: Wires for today

HCM

Arris Western USD 11,000.00

HCMFA

HCM	USD	308,374.00	Shared Services
HCFD Oper	USD	250,000.00	Equity Contribution

NPA

HCMFA	USD	325,000.00	one day loan
HCFD Oper	USD	120,762.09	Transfer Pricing

HCFD Oper

Sea Island	USD	23,511.90	Final Presidents Club bill
------------	-----	-----------	----------------------------

HCFD 12B-1

HCMFA	USD	37,822.00	12B-1 Reimbursement
-------	-----	-----------	---------------------

Falcon GP

HCM	USD	15,000.00	Shared Services
-----	-----	-----------	-----------------

NREA

HCM	USD	80,000.00	Shared Services
-----	-----	-----------	-----------------

Okay to release?

Kristin Hendrix, CPA | Assistant Controller



300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.628.4127 | F: 972.628.4147

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>

To: Kristin Hendrix <KHendrix@HighlandCapital.com>

Subject: RE: Wires for today

Date: Tue, 1 Dec 2020 12:04:49 -0600

Importance: Normal

Inline-Images: image001.jpg

ok

From: Kristin Hendrix

Sent: Tuesday, December 1, 2020 12:00 PM

To: Frank Waterhouse

Subject: Wires for today

HCM

Crescent TC	USD	158,695.74
Seery	USD	150,000.00
Nelms	USD	30,000.00
Dubel	USD	30,000.00
Simek	USD	42,598.52

HCMNY

Times Sq	USD	27,454.67
----------	-----	-----------

HCMFA

NPA	USD	325,000.00	11/30/2020 Loan Repayment
HIGHLAND TOTAL RETURN	USD	72,912.75	Advisory Fees
HIGHLAND FIXED INCOME	USD	55,287.79	Advisory Fees
HIGHLAND/IBOXX SRLOAN ETF	USD	25,004.95	Advisory Fees
HIGHLAND SMALL CAP EQUITY	USD	19,293.59	Advisory Fees

HCFD

Paul DeMaio	USD	2,000.00	Return of IT Holdback
-------------	-----	----------	-----------------------

Okay to send?

Kristin Hendrix, CPA | Assistant Controller



300 Crescent Court | Suite 700 | Dallas, Texas 75201

From: Kristin Hendrix <KHendrix@HighlandCapital.com>

To: Frank Waterhouse <FWaterhouse@HighlandCapital.com>

Cc: David Klos <DKlos@HighlandCapital.com>

Subject: FW: HCM - HCMFA/NPA

Date: Mon, 21 Dec 2020 12:30:25 -0600

Importance: Normal

FYI

From: Jack Donohue

Sent: Monday, December 21, 2020 12:15 PM

To: Kristin Hendrix

Cc: Fred Caruso

Subject: HCM - HCMFA/NPA

Kristin,

Has NPA paid the December payments \$168k and 252k payments for shared service and subadvisor? The last payment I see was 11/2/2020. Has HCMFA paid the December payment of \$416k? The last payment I see was on 11/2/2020.

Thanks,

Jack

Jack M. Donohue, CPA

Development Specialists, Inc.

10 South LaSalle Street, Suite 3300| Chicago, Illinois 60603

Phone: (312) 263-4141| **Fax:** (312) 263-1180

<http://DSiconsulting.com/>

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From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>

To: Kristin Hendrix <KHendrix@HighlandCapital.com>

Subject: Re: Wires for today

Date: Wed, 23 Dec 2020 11:05:46 -0600

Importance: Normal

Inline-Images: image001.jpg

Ok

On Dec 23, 2020, at 11:00 AM, Kristin Hendrix wrote:

HCM

HCM Ins	USD	49,213.01	health insurance premium funding
EAC	USD	36,000.00	Retainer Invoice; approved by Seery

HCMFA

HCM Ins	USD	8,686.93	health insurance premium funding
ACA	USD	375.00	
Principal Life	USD	71.53	

NPA

HCM Ins	USD	20,079.46	health insurance premium funding
---------	-----	-----------	----------------------------------

HCFD

Oper

HCM Ins	USD	26,339.40	health insurance premium funding
---------	-----	-----------	----------------------------------

EEA

HCM Ins	USD	1,161.82	health insurance premium funding
---------	-----	----------	----------------------------------

Okay to release?

Kristin Hendrix, CPA | Assistant Controller

300 Crescent Court | Suite 700 | Dallas, Texas 75201

O: 972.628.4127 | F: 972.628.4147

khendrix@highlandcapital.com | www.highlandcapital.com



Exhibit E

From: Frank Waterhouse <FWaterhouse@HighlandCapital.com>

To: Kristin Hendrix <KHendrix@HighlandCapital.com>

Subject: Re: Wires for today

Date: Thu, 31 Dec 2020 12:13:42 -0600

Importance: Normal

Ok

On Dec 31, 2020, at 12:11 PM, Kristin Hendrix wrote:

HCM

Meta-e	USD	360,384.10	approved by Seery
Houlihan Lokey	USD	41,460.00	approved by Seery
Bloomberg Finance LP	USD	16,491.04	approved by Seery
Arris Western Corp.	USD	11,000.00	approved by Seery
TW Telecom Holdings, llc	USD	6,182.17	approved by Seery
Mauro Staltari	USD	3,299.50	final Garden leave payment (processed outside of payroll)
Canteen Vending Services	USD	2,243.84	approved by Seery
Shawn Raver	USD	1,984.95	approved by Seery
Four Seasons Landscaping	USD	481.71	approved by Seery
Action Shred of Texas	USD	450.00	approved by Seery
ProStar Services, Inc	USD	367.38	approved by Seery
UPS Supply Chain Solutions	USD	164.31	approved by Seery

HCMFA

Shawn Raver	USD	4,631.55
DTCC ITP LLC	USD	892.88

NPA

Bloomberg Finance LP	USD	26,177.78
DST Asset Manager Solutions	USD	17,152.20
Dallas Zoological Society	USD	9,404.00
AnchorsGordan, PA	USD	1,605.75
Dow Jones & Company, Inc.	USD	1,599.00
UPS Supply Chain Solutions	USD	521.37
CHASE COURIERS, INC	USD	24.48

HCFD Oper

Highland Capital Management Fund			
Advisors	USD	64,562.00	Nov shared services
DST Technologies, Inc.	USD	5,741.59	
UPS Supply Chain Solutions	USD	114.68	

Falcon

E&P

HCM	USD	15,000.00	Dec shared services
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Exhibit A2

Exhibit F

App. 212

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I. BACKGROUND AND QUALIFICATIONS

1. My professional background includes over thirty-six years of experience as an investment banker, corporate board member, corporate executive, hedge fund executive, attorney, consultant, and expert witness.
2. I graduated with honors from Georgetown University in 1982 with a BSBA in Accounting, and I graduated from The University of Texas at Austin in 1985 with a Doctor of Jurisprudence degree. I hold the Chartered Financial Analyst (CFA) designation and am a licensed CPA and attorney in the State of Texas. I also hold the Series 7, 63, and 79 FINRA securities licenses¹. My CFA designation and my law, CPA, and FINRA licenses are all current.
3. I currently work as a corporate executive, as a corporate board member, as an investment banker, and as an expert witness.
 - a. I work on a part-time basis as the Chief Executive Officer of Harvest Oil & Gas, a former public company that is in the process of dissolving. I was Chairman of the Board of Harvest before assuming the Chief Executive Officer role. Until recently, Harvest was largely managed by another company pursuant to a services agreement. When the services agreement was entered into, the services provider and the predecessor of Harvest were affiliates, which they ceased to be during the term of the agreement. Services provided under the agreement included treasury, accounting, and operating functions. One of my roles as Chief Executive Officer is to replace the former service provider by bringing most business functions in-house.
 - b. I currently serve on the boards of seven private companies. I am typically appointed to boards by large shareholders. In total, I have been on the boards of thirty-two public and private companies. Those companies have operated in a broad cross section of industries, including agriculture, aviation, energy, entertainment, manufacturing, real estate, refining, retail, restaurants, technology, and telecom. I have served on the boards of companies that have outsourced most of their corporate functions or provided outsourcing services for other companies.
 - c. I conduct my investment banking work through Speyside Partners, LLC (“Speyside Partners”), an entity that I co-founded.² At Speyside I work on mergers, acquisitions and divestitures, financings, and restructurings.
4. Through the end of 2014, I spent thirteen years working for two different hedge funds. I was the General Counsel and a partner of Carlson Capital, the most recent hedge fund for which I worked. Carlson Capital managed approximately \$9 billion across a number of different funds during much of my tenure and followed a multi-strategy investing approach. Prior to working at Carlson Capital, I worked for Newcastle Capital Management, a hedge fund that pursued a deep value and activist investment strategy. I was the President of Newcastle Capital

¹ I formerly held the Series 24 FINRA license.

² The website for Speyside Partners is www.speysidepartners.com.

Management and worked there for almost six years. Newcastle Capital Management managed as much as \$650 million across a variety of funds while I was employed there. During my tenure, I served as the Chief Executive Officer of two companies controlled by the firm. Both Carlson Capital and Newcastle Capital Management had “shared-services” arrangements, where a separate entity provided a variety of back office, mid-office, and front office services to an affiliated party.

5. Prior to becoming a hedge fund executive, I was an investment banker for approximately twelve years at various large firms, including as a Managing Director for Bank of America Securities and as a Senior Managing Director for Bear Stearns. I also worked as an investment banker at Kidder Peabody, PaineWebber, and Wasserstein Perella. Over the course of my work at large investment banking firms, I focused on mergers, acquisitions, divestitures, capital raising, and restructurings.
6. Prior to becoming an investment banker, I was a securities and corporate lawyer for almost four years at Baker Botts.
7. Based on the work that I have done over the past thirty-six years, I have developed a deep understanding of services agreements and outsourcing generally as well as corporate governance-related matters. I applied the knowledge and experience that I have gained over the past thirty-six years to my analysis in this report.
8. I have previously served as a testifying and/or consulting witness in the following actions:
 - a. *Ascent Resources – Utica, LLC (f/k/a American Energy – Utica, LLC); Ascent Resources, LLC (f/k/a American Energy Appalachia Holdings, LLC); Ascent Resources Utica Holdings, LLC (f/k/a American Energy Ohio Holdings, LLC); The Energy & Minerals Group Fund III, LP; EMG Fund III Offshore Holdings, LP; FR AEU Holdings, LLC and FR AE Marcellus Holdings, LLC v. Duane Morris LLP*, in the 165th Judicial District Court of Harris County, Cause No. 2015-46550) — Consulting and Testifying witness for Plaintiffs.
 - b. *In re Paladin Energy Corp.*, Case No. 16-13590, in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division — Consulting and Testifying witness for Debtor.
 - c. *In re: Potential Complaint Against Larry Noble, Noble Operating, LLC, Noble Natural Resources, L.L.C. and Javier Urias to Avoid Transfers* — Testifying witness for Potential Defendants.
 - d. *James D. Sallah, not individually but solely in his capacity as Corporate Monitor for OM Global Investment Fund LLC and OM Global LP, Plaintiff, v. BGT Consulting, LLC, d/b/a BGT Fund Administration, and Lara Goldberg, Defendants* — Testifying witness on behalf of Defendants BGT Consulting, LLC, d/b/a BGT Fund Administration and Lara Goldberg.
 - e. *Kenneth A. Kristofek, Gruene Interests, LLC and Gruene Interests Services, LLC, Gran Toro Rojo, LLC, and Gruene USFC, LLC, v. David Gunderson, Horace Winchester, Stan*

Bradshaw, and Jerry Williamson, Gruenepointe Holdings, LLC, Adora 8, LLC, Adora 9, LLC, Adora 10, LLC, Adora 14 Realty, LLC, Onpointe Healthcare Development, LLC, U.S. Freedom Capital Holdings, LLC, Lake Ohana, LLC, U.S. Freedom Capital, LLC, and Encantado Investments, LLC, in the District Court of Dallas County, Texas, No. DC-16-07674 — Testifying witness on behalf of Plaintiffs.

- f. *In re SunEdison Securities Litigation, in the U.S. District Court for the Southern District of New York, 16-md-2742-PKC — Testifying witness on behalf of Plaintiffs.*
 - g. *Avid Controls, Inc. v. GE Energy Power Conversion Technology, Ltd.; General Electric Company; and Current Power Solutions, Inc., In the United States District Court for the Southern District of Texas - Houston Division, Civil Action No. 4:19-CV-01076 — Testifying witness on behalf of Plaintiff.*
 - h. *Lumos Partners, LLC, Claimant v. VAC-TRON EQUIPMENT, L.L.C., Respondent, In Arbitration before the American Arbitration Association — Testifying witness on behalf of Claimant.*
 - i. *Lord Abbett Affiliated Fund, Inc., et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. Navient Corporation, et al., Defendants, Case No. 1:16-cv-112-GMS, in the United States District Court for the District of Delaware, Case No. 1:16-cv-112-MN — Testifying witness on behalf of Plaintiff.*
 - j. *Southland National Insurance Corporation in Rehabilitation, Bankers Life Insurance Company in Rehabilitation, Colorado Bankers Life Insurance Company in Rehabilitation, and Southland National Reinsurance Corporation in Rehabilitation, Plaintiffs, v. Greg E. Lindberg, Academy Association, Inc., Edwards Mill Asset Management, LLC, New England Capital, LLC and Private Bankers Life and Annuity Co., Ltd., Defendants, in the General Court of Justice Superior Court Division, 19 CV 13093 —Testifying witness on behalf of Defendants.*
 - k. *Baylor University and Southwestern Baptist Theological Seminary, Plaintiffs, v. Harold E. Riley Foundation and Mike C. Hughes, Defendants, in the District Court of Tarrant County, Texas, 67th Judicial District — Testifying witness on behalf of Defendants.*
 - l. *Advsr, LLC, Plaintiff, v. Magisto, Ltd. And Yahal Zilka, Defendants, in the United States District Court, Northern District of California, San Francisco Division, Case No. 3:19-cv-2670 — Testifying witness on behalf of Defendants.*
 - m. *Lumos Partners, LLC, Claimant v. Altavian, Inc., In Arbitration before the American Arbitration Association — Testifying witness on behalf of Claimant.*
 - n. *Fouad Saade; and Kobi Electric, LLC, Claimants, v. Woodbridge International LLC, f/k/a Woodbridge Group, LLC; and Texender “Tex” Sekhon, Respondents, In Arbitration before the American Arbitration Association - Testifying witness on behalf of Claimant.*
9. I have attached a copy of my curriculum vitae as Exhibit A to this expert report (“Report”).

II. ENGAGEMENT

10. Highland Capital Management, L.P., is the debtor in the bankruptcy proceeding, *In re: Highland Capital Management, L.P., Debtor*, and is referred to herein as the “Debtor” or the “Plaintiff.” I have been engaged in the matters related to the bankruptcy proceeding that are listed below (collectively referred to as the “Actions”).
- a. *HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. NEXPOINT ADVISORS, L.P., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants*, Adversary Proceeding No. 21-03005, as a consulting and testifying expert witness on behalf of NexPoint Advisors, L.P. (“NexPoint”), and James Dondero (“Dondero” and NexPoint are collectively referred to as the “NexPoint Defendants”).
 - b. *HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HIGHLAND CAPITAL MANAGEMENT SERVICES, INC., JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants*, Adversary Proceeding No. 21-03006, as a consulting and testifying expert witness on behalf of Highland Capital Management Services, Inc. (“HCMS”), and Dondero (Dondero and HCMS are collectively referred to as the “HCMS Defendants”).
 - c. *HIGHLAND CAPITAL MANAGEMENT, L.P., Plaintiff, vs. HCRE PARTERS, LLC (N/K/A/ NEXPOINT REAL ESTATE PARTNERS, LLC), JAMES DONDERO, NANCY DONDERO, AND THE DUGABOY INVESTMENT TRUST, Defendants*, Adversary Proceeding No. 21-03007, as a consulting and testifying expert witness on behalf of HCRE Partners, LLC (“HCRE”), and Dondero (Dondero and HCRE are collectively referred to as the “HCRE Defendants”).
 - d. The NexPoint Defendants, the HCMS Defendants, and the HCRE Defendants are collectively referred to as the “Defendants.”
11. The Plaintiff has made claims against the Defendants for breach of contract, turnover of property, fraudulent transfer, and breach of fiduciary duty.
12. My engagement is through the law firms of Munsch Hardt Kopf & Harr, P.C. (“Munsch Hardt”) and Stinson LLP (“Stinson”), which are acting as counsel to the Defendants. I am being compensated for my time at the rate of \$750.00 per hour. My compensation is not in any way contingent on (i) the opinions I express in this Report or any additional report, (ii) the content of any testimony I may give, or (iii) the outcome of the Action.
13. I have met with Dondero as well as D. J. Sauter, who is the General Counsel of NexPoint. I have also met with attorneys from counsel to the Defendants: Munsch Hardt, and Stinson.
14. I was asked to provide my opinion regarding whether it was appropriate for the Plaintiff to not pay the interest and principal on the Notes (as hereinafter defined) on behalf of NexPoint, HCMS and HCRE (collectively, the “Makers”) by December 31, 2020.

III. BRIEF SUMMARY OF OPINIONS

15. I believe that the Plaintiff did not act reasonably by failing to pay amounts due on the Notes on behalf of the Makers by December 31, 2020, and otherwise in how it comported itself with respect to the Notes. Section 6.01 of the NexPoint Services Agreement (as hereinafter defined) sets forth a standard of care that the Plaintiff was supposed to comply with in paying the NexPoint Term Note; I also believe that each of the services agreements between the Plaintiff and the Makers required the Plaintiff to act in a reasonable way.
16. In forming my opinions and preparing this Report, I relied on all the materials listed in Exhibit B or otherwise cited herein as well as my background and personal experiences.
17. In offering my opinions, I am not opining on the legal enforceability of any agreements between the parties to the Actions.
18. I reserve the right to amend my Report should new information become available, including any assertions of the parties, witnesses, or any experts made in response to this Report.

IV. ASSUMPTIONS

19. The Debtor filed for bankruptcy on October 16, 2019. During the Debtor's bankruptcy, James Seery ("Seery") served as the Chief Executive Officer and/or Chief Restructuring Officer of the Debtor.
20. The Debtor was formerly managed by Dondero, who was the firm's co-founder and was its President until January 9, 2020, at which time he resigned all positions with the Debtor and also relinquished control of the Debtor.³ As of October 9, 2020, Dondero ceased to have any involvement as an officer or director of the Debtor.⁴ Dondero also testified that there was tension between Seery and him as well as Seery and others at Highland.⁵
21. During 2020, the relationship between Dondero and the Plaintiff became increasingly adversarial. For example, in addition to Dondero ceasing to have any involvement as an officer or director of the Plaintiff, there were various adversarial proceedings between the parties.⁶
22. NexPoint, HCMS and HCRE executed certain notes in favor of the Debtor as described below:
 - a. NexPoint executed a promissory note in the original principal amount of \$30,746,812.33, and payable in thirty annual installments beginning by December 31, 2017 (the "NexPoint Term Note").⁷ The NexPoint Note was fully payable in

³ Dondero Deposition, Volume 2, Page 291, lines 9 – 12.

⁴ *Id.* at Page 374, lines 8 – 10.

⁵ *Id.* at page 87, lines 8 – 14.

⁶ *See, e.g., Id.* at page 374, lines 6 – 9.

⁷ Amended Complaint dated August 27, 2021 (the "NexPoint Amended Complaint"), filed by Highland Capital Management, L.P. as plaintiff against defendants, NexPoint Advisors, L.P., James Dondero, Nancy Dondero, and The Dugaboy Investment Trust at 2.

the event of default.⁸ As of December 31, 2020, \$23,610,194.59 of principal remained outstanding on the NexPoint Term Note.⁹

- b. HCMS executed a term note in the original principal amount of \$20,247,628.02 and payable in thirty annual installments beginning on December 31, 2017 (the “HCMS Term Note”).¹⁰ The HCMS Term Note was fully payable in the event of default.¹¹
 - c. HCRE executed a term note in the original principal amount of \$6,059,831.51 and payable in thirty annual installments beginning on December 31, 2017 (the “HCRE Term Note”).¹² The HCRE Term Note was fully payable in the event of default.¹³
23. The Debtor and the Makers were all involved in the investment management business, collectively managing billions of dollars on behalf of investors at various points over the course of their relationship with each other. At the time that the NexPoint Term Note, the HCMS Term Note, and the HCRE Term Note (collectively, the “Notes”) were entered into, the Plaintiff, NexPoint, HCMS, and HCRE were all related parties as a result of overlapping equity ownership of the entities. As of December 31, 2020, NexPoint, HCMS, and HCRE ceased to have any overlapping equity ownership with the Plaintiff but continued to have overlapping ownership with each other.
24. The Plaintiff and NexPoint are parties to an Amended and Restated Shared Services Agreement dated January 1, 2018 (the “NexPoint Services Agreement”) pursuant to which Plaintiff provided a broad array of services to NexPoint.¹⁴ NexPoint operated its business with a small number of employees, relying on Plaintiff’s much larger workforce to provide many key services for NexPoint to run its business. The NexPoint Services Agreement details numerous areas where the Plaintiff was to provide services to NexPoint, with the Plaintiff essentially providing the entire workforce for most areas of NexPoint’s business. The areas that the Plaintiff provided services to NexPoint were detailed under the following headings in the NexPoint Services Agreement: Back- and Middle-Office, Legal Compliance/Risk Analysis, Tax, Management of Clients and Accounts, Valuation, Execution and Documentation, Marketing, Reporting, Administrative Services, Ancillary Services, and Other.¹⁵ The NexPoint Services Agreement essentially covered all functional areas of NexPoint’s business other than the executive and investment functions.

⁸ NexPoint Amended Complaint, Exhibit 3. Additionally, I am informed that there was the potential for forgiveness of the Notes in certain circumstances that had also not occurred by December 31, 2020.

⁹ D-NNI -074142.

¹⁰ Amended Complaint dated August 27, 2021 (“HCMS Amended Complaint”), filed by Highland Capital Management, L.P. as plaintiff against defendants, Highland Capital Management Services, Inc., James Dondero, Nancy Dondero, and The Dugaboy Investment Trust at 2.

¹¹ HCMS Amended Complaint, Exhibit 6.

¹² Amended Complaint dated August 27, 2021 (“HCRE Amended Complaint”), filed by Highland Capital Management, L.P. as plaintiff against defendants, HCRE Partners, LLC, James Dondero, Nancy Dondero, and The Dugaboy Investment Trust at 2.

¹³ HCRE Amended Complaint, Exhibit 6.

¹⁴ Amended and Restated Services Agreement dated January 1, 2018, Exhibit 9 to Seery Deposition.

¹⁵ *Id.* at pages 3 – 5.

25. The NexPoint Services Agreement contains several provisions relating to the Plaintiff's obligation to make interest and principal payments on the NexPoint Term Note, including the following:

- a. Section 2.02(a) details various "Back and Middle Office" tasks that the Plaintiff was responsible for performing on behalf of NexPoint.¹⁶ Those services included "payments,"¹⁷ which encompassed payments of interest and principal on the NexPoint Term Note.
- b. Section 2.02 (b) provided for the Plaintiff to provide "[a]ssistance and advice with respect to legal issues..."¹⁸
- c. Section 6.01 describes the standard of care that the Plaintiff was supposed to provide to NexPoint.¹⁹ The provision provides that the Plaintiff "shall discharge its duties under this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."
- d. Section 8.01 required that any amendments or modifications to the agreement were required to be in writing and signed by each party.²⁰
- e. Section 8.07 provided that any "condition or obligation imposed upon any Party may be waived only upon the written consent of the Parties."²¹

26. The Plaintiff first sought to provide notice of termination of the NexPoint Services Agreement in November of 2020, however, the termination date was extended²² and the NexPoint Services Agreement was still in effect as of December 31, 2020.

27. While there was no written agreement between either HCMS or HCRE, on the one hand, and the Plaintiff, on the other hand, relating to services that the Plaintiff was to supply to either party, the services that the Plaintiff provided to HCMS and HCRE were essentially the same services that the Plaintiff provided to NexPoint²³ and involved a comprehensive array of services that were necessary in the day-to-day operations of the business of HCMS and HCRE. Like with NexPoint, by December 31, 2020, there was a long history of the Plaintiff having provided services to HCMS and HCRE.²⁴

¹⁶ *Id.* at pages 3 - 4.

¹⁷ *Id.*, Section 2.02(a) provided, "Back- and Middle Office. Assistance and advice with respect to back- and middle-office functions including, but not limited to . . . finance and accounting, payments, operation, bookkeeping, cash management . . . accounts payable . . ."

¹⁸ *Id.* at page 4.

¹⁹ *Id.* at 11.

²⁰ *Id.* at 14.

²¹ *Id.* at 16.

²² Dondero Deposition, Volume 2, page 375, lines 3-10.

²³ *See, e.g.*, Dondero Deposition, Volume 2, page 335, line 19 to page 336, line 13; Waterhouse Deposition, page 353, lines 6 - 10, page 357, lines 19 - 24.

²⁴ Dondero Deposition, Volume 2, page 94, lines 20 - 22; page 95, lines 4 - 9.

28. When asked about whether the Plaintiff had a services agreement with HCMS, Dondero replied as follows during his deposition²⁵:

My answer would be the advisors like NexPoint and HFAM that had to have by law and regulatory statute have to have formal sub advisors and shared services agreements had formal shared services agreement. Entities that didn't need to have formal written shared services agreements were often serviced similarly or -- or exactly the same as those entities, but without a written agreement, but with a verbal shared services agreement providing, again, all the same similar services, and the entities that didn't have a written shared services agreement weren't getting shared services or support from any other entities other than Highland doing the same thing for them that it did for the mutual funds.

29. Dondero had a similar response with regard to there being an oral agreement for the Plaintiff to provide services to HCRE.²⁶

30. There was extensive testimony about the services that the Plaintiff provided to HCMS and HCRE:

- a. Under the oral agreements to provide services to HCMS and HCRE, the Plaintiff was responsible for making payments of interest and principal on the HCMS Notes and the HCRE Notes, which had previously been made by December 31, 2017, 2018, and 2019.²⁷
 - b. HCMS and HCRE relied on the Plaintiff to provide services because HCMS and HCRE, like NexPoint, did not have the employees or infrastructure to run its business without the services provided by the Plaintiff.²⁸
 - c. According to Frank Waterhouse ("Waterhouse"), the Chief Financial Officer of the Plaintiff throughout 2020²⁹, the Plaintiff provided the same services to HCRE and HCMSS that it did for NexPoint.³⁰ He also specifically testified that Plaintiff's services included timely paying of bills and loan payments for HCMS³¹ and the same bill paying for HCRE that it did for HCMS and NexPoint.³²
31. Interest and principal were due on the Notes by December 31, 2020. Neither interest nor any principal payments were paid on any of the Notes by December 31, 2020. The Plaintiff was supposed to facilitate these payments even though the payments were supposed to be to itself.

²⁵ Dondero Deposition, Volume 2, page 335, line 19 to page 336, line 13.

²⁶ *Id.* at page 381, lines 10 – 23.

²⁷ Waterhouse Deposition, page 354, lines 2 – 23, page 357, lines 2 – 18.

²⁸ Dondero Deposition, Volume 2, page 371, lines 5-9.

²⁹ Waterhouse Deposition, page 28, lines 15-16.

³⁰ *Id.*, page 353, 6-10; 357: 19 – 24.

³¹ *Id.* at page 354, lines 2 to page 357, line 18.

³² *Id.* at page 358, lines 12 – 24.

32. On January 7, 2021, the Debtor delivered a letter to each of the Makers (the “Acceleration Letters”) indicating that a default had occurred on each of the Notes and demanding the immediate full payment of “all principal, interest, and any other amounts due on the Note...”³³ The effect of the Acceleration Letters was that millions of dollars of principal payments were suddenly due; had the Acceleration Letters not been sent, principal on the Notes would have amortized ratably through 2047.
33. In addition to being the Plaintiff’s Chief Financial Officer, Waterhouse was also an officer of two of the three Makers as of December 31, 2020.
- a. He was the Treasurer of NexPoint, an officer-level role, during all periods relevant to my Report. Waterhouse reported at his deposition, “I still manage the finance and accounting function for NexPoint.”³⁴
 - b. He was the treasurer and acting treasurer of HCMS.³⁵
34. Plaintiff alleges that Dondero orally instructed Waterhouse to not pay the interest and principal on the NexPoint Term Note that was due on December 31, 2021.³⁶ No evidence has been presented that suggests that Dondero’s alleged instructions for the Plaintiff to not pay interest and principal on the NexPoint Term Note was in writing. The apparent rational for the alleged instruction was that NexPoint believed that there had been substantial overcharges totaling in the millions of dollars by the Plaintiff under the NexPoint Services Agreement. The overcharges related to charges for employees who were no longer working for the Plaintiff but that were still being charged to NexPoint, which was a violation of the NexPoint Services Agreement. Furthermore, Dondero denies that he instructed Waterhouse not to pay the NexPoint Term Note.³⁷
- a. Dondero denies that he instructed that no interest and principal be paid on the NexPoint Term Note, testifying, “There is no logical reason, nor would I have ever authorized or suggested no payment to put us...in default due to a *deminimis* amount of money....even if I was highly annoyed with Seery, even if we knew that Seery and Highland had overcharged NexPoint by whatever it was, 14, 16, million bucks, I would not have let a small amount cause a...breach.”³⁸
 - b. Dondero also testified that the Plaintiff made the payments due on the Notes by December 31 of 2017, 2018 and 2019 without any specific authorization from any of the Makers.³⁹
35. No evidence was presented suggesting that Dondero, HCMS or HCRE instructed the Plaintiff not to make payments on the HCMS Term Note or the HCRE Term Note. HCMS and HCRE had a reasonable expectation that interest and principal on the HCMS Notes and HCRE Notes

³³ Exhibit 6 to Seery Deposition taken on October 21, 2021.

³⁴ Waterhouse Deposition, page 28, lines 15-16.

³⁵ *Id.*, at page 30, lines 9 – 16.

³⁶ *Id.*, at page 390, lines 4 – 13.

³⁷ Dondero Deposition, Volume 2, page 391:18-25.

³⁸ *Id.*

³⁹ *Id.* at page 463, lines 10-25.

would be paid by December 31, 2020, given past practices and the Plaintiff's obligation to do so.

36. Mr. Waterhouse testified about his responsibility in connection with making the payments on the Notes that were due by December 21, 2020⁴⁰:

Q: Did you approve of each payment that was made against principal and interest on the notes that were given by the affiliates of Mr. Dondero?

A: Did I approve the payments? I approve - I approve - if there was cash - if there was cash being repaid on a note payment, yes, I approved in the general sense of being made aware of the payment and the amount."

Q: And are you the person who authorized Highland's employees to effectuate those payments?

A: Yes.

37. No evidence has been presented of any discussions that the Plaintiff had with Dondero or any of the Makers prior to December 31, 2020, with regard to payments on the Notes other than the alleged discussion between Dondero and Waterhouse described above relating to the NexPoint Term Note. Specifically, the evidentiary record reflects that there was no follow-up by Waterhouse or anyone else at the Plaintiff confirming that it was Dondero's intent for there not to be any payments made on the NexPoint Term Note.⁴¹

- a. A number of Plaintiff's employees knew about Dondero's alleged instructions prior to December 31, 2020, with respect to the NexPoint Term Note, yet no effort was undertaken to investigate Dondero's instructions by speaking with him or otherwise confirming what NexPoint's intent was regarding the NexPoint Term Note.
- b. Deposition testimony by Kristin Hendrix ("Hendrix"), who was the assistant controller of the Plaintiff at the time, revealed that she knew by November 30, 2020, or December 1, 2020, that the Plaintiff was not going to pay the interest and principal on the NexPoint Term Note that was due by December 31, 2020.⁴²
- c. Waterhouse testified that he did not follow-up with Dondero about whether NexPoint should make the payments required by December 31, 2020.⁴³

38. Waterhouse also testified that there had not been any instructions from anyone to the Plaintiff to not make the required payments on the HCMS Term Note or the HCRE Term Note by December 31, 2020.⁴⁴ When asked about Dondero's tone when he talked to him about the fact that the payments had not been made on the HCMS Term Note and the HCRE Term Note,

⁴⁰ Waterhouse Deposition, page 56, line 21 to page 57, line 10.

⁴¹ *Id.*, at page 391, lines 18 – 21.

⁴² Hendrix Deposition, page 12, lines 4 – 7.

⁴³ Waterhouse deposition, pages 391: line 18 to page 392, line 2.

⁴⁴ Waterhouse Deposition, pages 393, line 21 – 25 to page 394, line 4.

Waterhouse said that the tone was very negative and that Dondero's reaction was consistent with the fact that Dondero was surprised that the payments had not been made.⁴⁵

V. SERVICES AGREEMENTS GENERALLY

39. Companies seeking to conduct operations more efficiently frequently outsource various operational, accounting, treasury, and other functions to a service provider. By outsourcing such functions, the customer of the services provider can avoid costly employee and infrastructure investments that would otherwise be required to conduct the outsourced functions.
40. The agreement between the party receiving the services and the party providing the services is often referred to as a "services agreement," an "outsourcing agreement," or a "shared services agreement." These terms have the same meaning for purposes of this Report although the term "shared services" is often used in the context of a company sharing services with an affiliated party.
41. The parties to a services agreement are sometimes related and other times are completely separate with no prior business relationship.
42. The actual agreement that comprises the services to be provided under a services agreement varies in form. Some services agreements are comprehensive, others provide limited written direction, and still others are oral.
43. Smaller companies are often more likely to outsource a broad set of business functions, typically because they are growing rapidly and do not have the financial resources or time to build out various important business functions.
44. Virtually every company outsources some type of business function to a third-party. For example, many companies outsource limited functions such as payroll processing or IT services to various vendors. There is a distinct difference, however, between outsourcing limited functions to a vendor that provides services for many clients versus the more fulsome relationship that is embodied by the typical services agreement involving the services provider managing major aspects of a company's operational and back-office functions.
 - a. Providers of more fulsome services have additional duties relative to a provider that is responsible for limited services. Those additional duties generally emanate from the level of responsibility that the services provider takes on and the services provider's more intimate knowledge of its customer's business.
 - b. Said another way, a provider of a straightforward and often outsourced service such as payroll processing has no reason to understand the underlying business issues of its customers or the perspectives of the employees for which it processes payroll. On the other hand, a provider of more fulsome services has an intimate knowledge

⁴⁵ *Id.* at page 394, lines 12 – 21.

of the goals, objectives, and capabilities of its customers and in discharging its obligations, cannot ignore that knowledge.

45. In the case of services agreements that cover a fulsome set of activities for the customer, even if there is a comprehensive agreement between the parties, it is difficult to enumerate with specificity each individual task that the services provider is expected to perform. Tasks are therefore often described in broad terms as opposed to specific detail (i.e., the service provider is required to handle accounting functions for its customer as opposed to saying that a trial balance is required 15 days after month-end, or the annual audit must be completed by a specified date).
- a. Despite the difficulty in describing each task with specificity that the services provider is required to perform, the specific tasks become apparent as the services provider performs functions on behalf of its customer. In the ordinary course, practices develop that inevitably are deemed acceptable to the services provider and its customer. Such practices are generally fully clarified within one year of the inception of the services agreement because that timeframe allows the parties to interact with each other over the course of a full accounting cycle.
 - b. Following the initial cycle of activities, those previously performed practices are often referred to as “past practices” and such past practices become an important piece in gauging whether the services provider has met its obligations in future periods. Having been affiliated with companies that are customers of services providers, I think of past practices as having virtually the same effect as a written document provided that the services agreement is not written in a way that prohibits such an interpretation.
46. Services agreements between related parties often present complicated issues, especially if the relationship changes between the parties during the term of the services agreement. For example, at the beginning of the term of the services agreement, two related parties might constructively work together, almost obviating the need for a detailed agreement between the parties. If there is a change in the relationship between the parties that leads to less cooperation, the original agreement may not be comprehensive enough to optimally deal with the change in circumstances.
- a. In such situations, past practices can become an even more important factor in determining the services provider’s obligations and the reasonable expectations that the customer should have if the contract language is not explicit on the point.
 - b. While the services provider and a customer that is related at the outset of an agreement may cease to be related at some point during the term of the agreement, the services provider’s knowledge of the customer’s business objectives does not necessarily become stale immediately upon the change in affiliate status. Consequently, any higher duty that comes about from the knowledge that the services provider has about its customer is not necessarily impacted if the affiliate status of the services provider and its customer changes.

VI. OPINIONS

A. The Plaintiff was obligated to pay interest and principal on the NexPoint Term Note by December 31, 2021, on behalf of NexPoint. Despite the alleged instruction from Dondero that the Plaintiff should not make any payments on NexPoint's behalf, the Plaintiff's obligations to make the payments did not end. At a minimum, the Plaintiff had a duty to investigate whether the payments should have been made, which it did not do. In not making the payments on the NexPoint Term Note and not undertaking steps to further investigate whether the payments should have been made, the Plaintiff did not act reasonably.

47. The payment terms of the NexPoint Term Note required that interest and principal was due to the Plaintiff from NexPoint on or before December 31, 2020. It is undisputed that interest and principal were not paid on the NexPoint Term Note by the required date.

48. The Plaintiff was obligated to make the payment of interest and principal on behalf of NexPoint on or before December 31, 2020, under the NexPoint Services Agreement.

49. The Plaintiff has taken the position that the interest and principal that was due on the NexPoint Term Note by December 31, 2020, was not paid because of Dondero's alleged directive to Waterhouse to not make the payments.⁴⁶

50. The evidentiary record highlights several noteworthy facts:

- a. The Plaintiff had conflicting roles because it was the payee of the NexPoint Term Note and also had the obligation to cause the payments to be made on the NexPoint Term Note. The conflicting roles were also heightened because of the increasingly adversarial role that had developed between the Plaintiff and Dondero.
- b. The Plaintiff stood to benefit mightily if NexPoint defaulted on the payment of interest or principal, given the Plaintiff's ability to immediately accelerate the payment of the NexPoint Term Note. Without a default, some of the principal of the Notes could have been outstanding until 2047.
- c. Waterhouse was an officer of the Plaintiff and was also an officer of NexPoint, creating a conflict beyond the conflicts that the Plaintiff had that are described above. Given his dual roles, he had knowledge of the business objectives and financial condition of NexPoint, which should have made it clear to him that NexPoint would not welcome a default on the NexPoint Term Note.
- d. NexPoint allegedly made overpayments to the Plaintiff that Dondero wanted to be offset against the required interest and principal payments on the NexPoint Term Loan.⁴⁷ The overpayments related to workers that the Plaintiff was charging to NexPoint that no longer worked for the Plaintiff, which violated the terms of the

⁴⁶ Waterhouse Deposition, page 390, lines 4 – 13.

⁴⁷ Seery Deposition, page 226, lines 2 – 4; Dondero Deposition, Volume 2, page 392, lines 3 – 7.

NexPoint Services Agreement. There were ongoing discussions between Dondero and Seery leading up to the end of 2020 relating to the topic.

- e. There is no evidentiary record describing any effort by the Plaintiff to warn NexPoint of the implications of Dondero's alleged request for the payments on the NexPoint Term Note to not be made. For example, despite the fact that the NexPoint Services Agreement required the Plaintiff to provide NexPoint with legal services, the Plaintiff failed to provide NexPoint with legal advice that failing to pay interest and principal could result in an acceleration of the NexPoint Term Loan.
51. In my opinion, Dondero's alleged statement to Waterhouse that the Plaintiff should not make payments on the NexPoint Term Note on December 31, 2020, did not provide a basis for the Plaintiff to not make the payments on the Notes given its obligations to NexPoint under the NexPoint Services Agreement. Several reasons support my opinion:
- a. There is no evidence that the Plaintiff took any reasonable steps to address the myriad of conflicts that it faced.
 - i. The Plaintiff's obligations regarding the required payments of the Notes involved the conflict-ridden task of authorizing and making a payment to itself. Additionally, the Plaintiff stood to benefit significantly by putting the NexPoint Term Note into default given that a default would allow the Plaintiff to realize the proceeds from repayment of the note far earlier than it otherwise would have; had the NexPoint Term Loan not been accelerated, it would have remained outstanding until 2047. While the evidence is silent on whether the Plaintiff was considering the repayment benefit of the NexPoint Term Loan to itself, from an appearance standpoint, the conflict was glaring.
 - ii. The Plaintiff apparently took no steps to address these conflicts either by conferring with NexPoint or Dondero. Conferring with NexPoint or Dondero would have helped in establishing that NexPoint and Dondero really did not want the Plaintiff to transfer funds to pay interest and principal on the NexPoint Term Loan.
 - iii. The Plaintiff also has presented no evidentiary record reflecting how any internal steps were taken to address the conflict. Such steps might have included conducting meetings internally with minutes to reflect discussion regarding the conflict or any efforts to seek guidance from counsel to assist with the conflict.
 - iv. According to deposition testimony by Hendrix, who was the assistant controller of the Plaintiff at the time⁴⁸, she recalled receiving a phone call from Waterhouse on either November 30, 2020, or December 1, 2020, where Waterhouse indicated that no payments would be made by the Plaintiff

⁴⁸ Hendrix Deposition, page 12, lines 4 – 7.

on behalf of NexPoint.⁴⁹ Accordingly, it seems that Plaintiff decided as early November 30, 2020 or December 1, 2020, to not make the payments on the NexPoint Term Note. Given the apparent time frame of the decision to not make the payment, the Plaintiff had ample time to confirm in writing with Dondero that the payments should not be made or to otherwise take reasonable steps to ensure that a mistake was not being made and that the Plaintiff was acting reasonably.

- b. The Plaintiff had an obligation to act reasonably in discharging its obligations to make the payments on the NexPoint Term Note on behalf of NexPoint. In addition to not properly addressing conflicts as set forth above, the evidentiary record further reflects that the Plaintiff did not act reasonably.
 - i. No effort was undertaken to inform Dondero that the Plaintiff disagreed with his assumption that there were offsets to the required interest and principal payment requirements on the NexPoint Term Note. Absent any communication from the Plaintiff, Dondero simply had no way of knowing that the Plaintiff disagreed with his perspective that a right of offset did exist, so it was reasonable for him to think that discussion of an offset was on the table.
 - ii. Waterhouse had worked for or with Dondero for many years, making him very familiar with Dondero's management style. Dondero is a decisionmaker who is willing and does change his mind when presented with new facts, something that Waterhouse should have been aware of yet did nothing to address.
 - iii. Given the massive implications of a default of the NexPoint Term Loan to NexPoint, which the Plaintiff should have understood given the robust services that it was providing to NexPoint and the dual financial responsibilities that Waterhouse had to both organizations, the Plaintiff should have acted more responsibly by engaging with NexPoint and Dondero to confirm NexPoint's intent.
 - iv. The NexPoint Services Agreement provides that the Plaintiff was supposed to provide NexPoint with legal advice. In effect, the Plaintiff was NexPoint's law firm. Had the Plaintiff met its commitment, it would have had its internal counsel consult with NexPoint to point out the legal ramifications of the interest and principal payments not being made. There is no evidence suggesting that the Plaintiff took any steps to meet its obligation to provide legal advice as required under the NexPoint Services Agreement.
- c. Waterhouse had a conflict separate from the conflicts that the Plaintiff otherwise had given that he was an officer of both the Plaintiff and the NexPoint. Among

⁴⁹ *Id.* at 71, lines 4 – 7.

other things, Waterhouse's officer role for NexPoint must have provided him with insights into NexPoint's business objectives, which could not have included any appetite for having the Notes accelerated. Yet there is no evidence that Waterhouse's knowledge was utilized in Plaintiff's decision making regarding the required payments of the Notes. It is inapposite to argue that because Waterhouse had knowledge about NexPoint from a source other than the Plaintiff, that he was entitled to ignore that knowledge. In discharging its duties under the NexPoint Services Agreement, the Plaintiff should have been using all information that it had available in its work on behalf of NexPoint.

- d. The NexPoint Services Agreement provided that any amendment to the agreement needed to be in writing⁵⁰ and any consent to a change in the agreement needed to be in writing.⁵¹ No such effort to comply with the writing requirement was undertaken and highlights the fact that any oral statement by Dondero regarding the NexPoint Term Loan not being paid was insufficient under the express terms of the NexPoint Services Agreement.
 - e. Section 6.01 of the NexPoint Services Agreement also describes the standard of care that the Plaintiff was supposed to provide to NexPoint in the discharge of its obligations under the agreement.⁵² The provision provides that the Plaintiff "shall discharge its duties under this Agreement with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." For reasons already described herein, the Plaintiff did not discharge its duties with such care.
52. For the foregoing reasons, any alleged default under the NexPoint Term Note was the result of the Plaintiff's own negligence and misconduct, which underscores that Plaintiff did not act reasonably in the discharge of its obligations to NexPoint.

B. Based on the oral agreement that the Plaintiff had with HCMS and HCRE and consistent with the services that the Plaintiff had previously provided, HCMS and HCRE had a reasonable expectation that the Plaintiff would continue paying interest and principal on behalf of those entities absent explicit direction to the contrary. As there was no directive from anyone affiliated with HCMS or HCRE to relieve the Plaintiff of that responsibility, the Plaintiff did not act reasonably by not meeting its obligations to make payments of interest and principal on behalf of HCMS and HCRE.

53. While the services agreements between Plaintiff, on the one hand, and HCMS and HCRE, on the other hand, were oral, the existence of an oral services agreement between affiliated parties involved in the investment management business is common and is something that I have regularly observed.

⁵⁰ Amended Services Agreement, Section 8.01.

⁵¹ *Id.* at Section 8.07.

⁵² *Id.* at Section 6.01.

54. Like with NexPoint, the Plaintiff provided HCMS and HCRE with a comprehensive array of services that were necessary to the day-to-day operation of their businesses. There was a lengthy history of the Plaintiff providing HCMS and HCRE with such services. The broad array of services provided by the Plaintiff to NexPoint were the same as the scope of work performed by the Plaintiff for HCMS and HCRE.

55. The evidentiary record highlights several noteworthy facts:

- a. The evidentiary record reflects that the Plaintiff historically made payments on behalf of the HCMS Term Note and HCRE Term Note in addition to providing an array of other critical services to HCMS and HCRE not dissimilar from many of the services that the Plaintiff provided to NexPoint under the NexPoint Services Agreement.⁵³
- b. No evidence has been presented suggesting that there was any communication from HCMS, HCRE, or Dondero suggesting that the payments on the HCMS Term Note and the HCRE Term Note should not continue.
- c. No evidence has been presented suggesting that on payment dates in years prior to 2020 HCMS or HCRE had to notify the Plaintiff that it wanted the Plaintiff to make the required payments on the HCMS Term Note or the HCRE Term Note. Accordingly, it would not have been reasonable for the Plaintiff to expect that HCMS or HCRE were required to take any affirmative steps to have payments made on their notes.
- d. The Plaintiff had conflicting roles because it was the payee of the HCMS Term Note and the HCRE Term Note and also had the obligation to cause the payments to be made of those notes. The conflicting roles were also heightened because of the increasingly adversarial role that had developed between the Plaintiff and Dondero.
- e. The Plaintiff stood to benefit mightily if HCMS and HCRE defaulted on the payment of interest or principal, given the Plaintiff's ability to immediately accelerate the payment of those notes. Without a default, some of the principal of the HCMS Term Note and the HCRE Term Note could have been outstanding until 2047.
- f. Waterhouse was an officer of the Plaintiff and was also an officer of HCMS, creating a conflict beyond the conflicts that the Plaintiff had that are described above. Given Waterhouse's dual roles, he had knowledge of HCMS's business objectives and financial condition, which should have alerted him that HCMS would not welcome a default on the HCMS Term Note.

⁵³ See, e.g., Dondero Deposition, Volume 2, pages 335:19 to 336:13; page 381, lines 10-23.

- g. The Plaintiff made no effort to warn HCMS or HCRE of the implications of the Plaintiff not making payments on the HCMS Term Note or HCRE Term Note by December 31, 2020.

56. Dondero testified about the payments that were required on the HCMS Term Note by December 31, 2020, indicating that there was an expectation by HCMS that the payments were going to be made, regardless of whether there were specific instructions by HCMS to do so.⁵⁴

Q: Okay. Do you know whether anybody acting on behalf of HCMS ever instructed or authorized Highland to make a payment on account of HCMS's term note to Highland?

A. Well, again, and maybe I didn't say it clearly enough. I think there was a reliance in the due course aspect, especially on small amounts, and it would have been done by Highland personnel on behalf of Services.

* * * * *

Q. And I'm going to ask you, Mr. Dondero, to be patient with me and to listen carefully to my question. Are you aware of anybody acting on behalf of HCMS, whoever instructed Highland to make a payment in satisfaction of any payment that was due at the year-end of 2020 under the term note?

A. Not specifically, but I'm saying I don't think it needed to be made specifically.

57. The Plaintiff was required to act reasonably in the performance of its obligations to HCMS and HCRE given the record of past practices and the precedent created by similar work done by the Plaintiff for NexPoint. With respect to the payments required under the HCMS Term Note and the HCRE Term Note by the Plaintiff, HCMS and HCRE had a reasonable expectation that they would continue receiving such payment services absent a clear termination by Plaintiff of its obligations to HCMS and HCRE. Given that there is no evidence suggesting that any of the parties had terminated the Plaintiff's obligations to provide services to HCMS and HCRE as of December 31, 2020, especially given that the Plaintiff continued to perform other services on behalf of those entities as of such date, the Plaintiff did not act reasonably by not making the payments on the HCMS Term Note and the HCRE Term Note by December 31, 2021. Likewise, it was also not reasonable for the Plaintiff to not discuss with HCMS and HCRE that payments were not going to be made on the HCMS Term Note and the HCRE Term Note given that payments had been made in prior years without any request by HCMS or HCRE.

58. Hendrix testified that the instruction to her not to make the NexPoint Term Loan payment by December 31, 2020, did not apply to the payments required on the HCMS Term Note and the HCRE Term Note by December 31, 2020.⁵⁵ She also testified that she made no attempt or effort to determine whether Dondero wanted the payments required on the HCMS Term Note

⁵⁴ Dondero Deposition, Volume 2, pages 371:23 – 372:18.

⁵⁵ Hendrix Deposition, page 100, lines 20 – 23; page 101, lines 8 – 12.

and the HCRE Term Note to be paid by December 31, 2020.⁵⁶ Finally, Hendrix made no attempt to check with anyone whether the payments should be made.⁵⁷ Hendrix's testimony underscores that Plaintiff did not act reasonably in discharging its obligations to HCMS and HCRE.

59. For the foregoing reasons, any alleged default under the HCMS Term Note and the HCRE Term Note was the result of the Plaintiff's own negligence and misconduct, which underscores that Plaintiff did not act reasonably in the discharge of its obligations to HCMS and HCRE.

VII. CONCLUSION

60. In summary, based on the evidence that I have reviewed and relied upon, as well as my training and experience, it is my opinion that the Plaintiff did not act reasonably in choosing not to pay the interest and principal due under the Notes. As a result of Plaintiff's failures to act reasonably, it should not have accelerated payment of the principal amount of the Notes.

Respectfully submitted,



Steven J. Pully, CPA, CFA, ESQ.

⁵⁶ *Id.* at page 102, lines 10 – 13.

⁵⁷ *Id.* at page 105, lines 8 – 11.

STEVEN J. PULLY

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Employment History

October 2014 – Present	<p>SPEYSIDE PARTNERS/INVESTMENT BANKER/CONSULTANT/BOARD DIRECTOR/CORPORATE EXECUTIVE</p> <ul style="list-style-type: none"> <i>Investment banker/consultant to companies, investors and creditors on matters including capital raising, distressed debt restructurings, asset dispositions, activist investing defense, strategic opportunities, and expert witness matters</i> <i>Chief Executive Officer and Chairman, Harvest Oil & Gas (post-reorg)</i>
January 2008 – Sept. 2014	<p>CARLSON CAPITAL, L.P., General Counsel and Partner, Dallas, Texas</p> <ul style="list-style-type: none"> <i>Responsible for legal affairs of hedge fund with over \$9.0 B of AUM; worked closely with affiliated oil and gas private equity fund with \$700 of AUM beginning in 2010</i> <i>Member of Management, Operating and Valuation Committees (Chair)</i>
Dec. 2001 – October 2007	<p>NEWCASTLE CAPITAL MANAGEMENT, L.P., President, Dallas, Texas</p> <ul style="list-style-type: none"> <i>Activist fund with \$650 MM of assets under management</i> <i>Operating positions for portfolio companies: CEO of Pinnacle Frames, Jan. 2003 – June 2004 (largest domestic picture frame manufacturer with 600 employees; involved in multiple visits to Wal-Mart, visited China and identified new CEO for company); CEO of New Century Equity Holdings, June 2003 – Oct. 2007 (cash shell seeking to acquire business)</i>
May 2000 – Dec. 2001	BANC OF AMERICA SECURITIES , Managing Director, Investment Banking - M&A/ Energy & Power Groups; Houston and Dallas, Texas
January 1997 – May 2000	BEAR STEARNS & CO. INC. , Senior Managing Director - Investment Banking Department; Dallas, Texas
April 1996 – Dec. 1996	<p>CONVERGENT ASSOCIATES, INC., President, Dallas, Texas.</p> <ul style="list-style-type: none"> <i>Private equity firm that controlled three technology-oriented companies involved in travel, media and software; affiliated with EDS</i>
January 1996 - April 1996	<p>WASSERSTEIN PERELLA & CO., INC., Vice President - Investment Banking Department; Dallas, Texas</p> <ul style="list-style-type: none"> <i>Left after brief association because supervisor announced departure plans</i>
July 1989 - Dec. 1995	PAINWEBBER INCORPORATED/ KIDDER, PEABODY & CO. , First Vice President - Investment Banking Department; New York City and Houston, Texas
October 1985 - July 1989	BAKER & BOTTS, Attorneys , Associate – Corporate Department; Houston, Texas

Board Experience

Board Leadership - Experience as Lead Director, Chairman of the Board, Executive Committee member and Chairman of Audit, Compensation, Governance and Strategic Committees
Accounting/Finance - CPA and CFA certifications, significant experience with financial statements and analysis, member of several audit committees including chair role
Strategic Transactions/Capital Raising - Substantial history with successful strategic transactions and efficient capital raising, including debt restructurings
Governance/Activist Investing Expertise - Extensive experience with shareholder governance and activist investing/defense; positive reputation with shareholders as a value creator
Legal/Regulatory - Licensed attorney, extensive experience managing legal/compliance department

Public Company Directorships

Previous: Bellatrix Exploration, Energy XXI (Chair – Comp and Strategic), EPL Oil & Gas Inc. (Lead Director, Chair - Comp), Ember Resources, Cano Petroleum, Goodrich Petroleum, Harvest Oil and Gas (Chairman of the Board, Chair – Audit), Peerless Systems (Chair – Audit), New Century Equity Holdings, MaxWorldwide, Geoworks Corporation, Pizza Inn (Chair – Governance), Titan Energy, VAALCO Energy (Chair – Governance, Comp), Whitehall Jewelers (Chairman)

Private Company Directorships

Current: Harvest Oil & Gas (Chairman of the Board and Chief Executive Officer, formerly public company), Limetree Bay Energy, Heritage Power, Response Team 1, Wild Rivers, OWS, ExpressJet
Previous: Fox & Hound, GenCanna Global, Pinnacle Frames & Accents, Aspire Holdings (Chair – Comp), PermianLide, Tribune Resources (Chair – Audit), PGI, Southland Royalty, Greylock Energy, Karya Properties, PRIMEXX Energy, Titan Energy

Professional Certifications, Education and Other Interests

CHARTERED FINANCIAL ANALYST, 2004 (Active member), **CERTIFIED PUBLIC ACCOUNTANT**, Texas, 1985 (Active member), **STATE BAR OF TEXAS**, 1985 (Active member), **FINRA** Series 7, 63 and 79 (Current)

The University of Texas School of Law, 1985

International Law Journal, Moot Court, Board of Advocates

Georgetown University, BSBA with honors, 1982, Major in accounting with 3.90 GPA in major
President of Student Government Senate, National Model U.N. Team

Centre for Management Studies, Oxford University, England, Summer 1981

Sailing, golf, writing, biking and travel; married with two adult daughters

Board of Advisors, Georgetown McDonough School of Business, 2015 - 2018

Documents Reviewed

Complaint for (I) Breach of Contract and (II) Turnover of Property of the Debtor's Estate (Dkt. No. 1, Adv. Proc. No. 21-03004)

Amended Complaint for (I) Breach of Contract, (II) Turnover of Property, (III) Fraudulent Transfer, and (IV) Breach of Fiduciary Duty (Dkt. No. 63, Adv. Proc. No. 21-03005)

Defendant NexPoint Advisors, L.P.'s Answer to Amended Complaint (Dkt. No. 64, Adv. Proc. No. 21-03005)

Amended Complaint for (I) Breach of Contract, (II) Turnover of Property, (III) Fraudulent Transfer, and (IV) Breach of Fiduciary Duty (Dkt. No. 68, Adv. Proc. No. 21-03006)

Highland Capital Management Services, Inc.'s Answer to Plaintiff's Complaint (Dkt. No. 6, Adv. Proc. No. 21-03006)

Defendant Highland Capital Management Services, Inc.'s Answer to Amended Complaint (Dkt. No. 73, Adv. Proc. No. 21-03006)

Amended Complaint for (I) Breach of Contract, (II) Turnover of Property, (III) Fraudulent Transfer, and (IV) Breach of Fiduciary Duty (Dkt. No. 63, Adv. Proc. No. 21-03007)

Defendant HCRE Partners, LLC (n/k/a NexPoint Real Estate Partners, LLC)'s Answer to Amended Complaint (Dkt. No. 68, Adv. Proc. No. 21-03007)

Defendant James Dondero's Answer to Amended Complaint (Dkt. No. 83, Adv. Proc. No. 21-03003)

Remote Videotaped Deposition of Frank Waterhouse, taken October 19, 2021 and Exhibits

Video Deposition of James P. Seery, Jr., taken October 21, 2021 and Exhibits

Deposition of Kristin Hendrix, taken October 27, 2021 and Exhibits

Deposition of David Klos, taken October 27, 2021

Remote Deposition of James Dondero, Volume II, taken October 29, 2021 (Rough draft) and Exhibits

Remote Deposition of James Dondero, Volume III, taken November 4, 2021 (Rough draft) and Exhibits

Exhibit G

RE: *Highland Capital Management, L.P.*

MAY 28, 2021

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INTRODUCTION

I have been retained by Stinson LLP (“Stinson”), counsel to Mr. James Dondero, to provide expert opinions based on my knowledge and experience advising asset management and other financial service firms on compensation over the period 2013 to 2019. Specifically, I have been asked to independently analyze the competitiveness of compensation provided to Mr. Dondero compared to compensation received by executives and senior employees with similar experience and roles. In addition, I was asked to opine on and provide information on the use of loans in the marketplace as a form of compensation. Mr. Dondero is the Founder and, throughout the period, was the CEO, and head portfolio manager of Highland Capital Management LP (“HCM”) and in that role, performed the same services for related companies and companies managed by HCM, including Highland Capital Management Financial Advisors (“HCMFA”) and NexPoint Advisors (“NPA”). Market competitive compensation for Mr. Dondero during this period is relevant based on the apparent shortfall in annual compensation to Mr. Dondero. Throughout this period, he received loans in lieu of additional current compensation. Consistent with company practice, the loans were considered a form of deferred compensation that could be realized over time as the loans were forgiven and the income recognized by the individuals.

My opinions in this report are based on my experience consulting on executive compensation since 1980, my review of certain materials produced on Highland and its affiliates, and my perspectives on compensation programs for comparable senior executives and key employees in the industry.

BACKGROUND

Professional Experience

The issues I have been asked to provide opinions on are topics I have regularly encountered during many years of advising financial services firms, including asset management firms. I am an executive compensation consultant, and my firm, Johnson Associates, is a prominent boutique compensation consulting firm. My firm has specialized for many years in analyzing and advising the financial services industry, including major investment and asset management firms, hedge funds and other alternative investment firms, advisory firms, commercial banks, insurance companies, and brokerage firms.

I have extensive experience reviewing and assessing appropriate market levels of compensation for clients. I have worked as a compensation consultant since 1980. In 1992, I founded my own compensation consulting firm, Johnson Associates in New York City. Johnson Associates, where I am currently Managing Director, is a boutique firm specializing in compensation consulting for the financial services industry. We routinely consult on and have a strong understanding of market compensation levels for senior professionals and executives. Prior to founding my own firm, I was a consultant at several leading compensation advisory firms.

Our clients have included many of the world's most significant financial institutions, asset managers and alternative investment firms across a broad range of issues. A summary of my work history and education is attached as Exhibit A. I am regularly quoted on compensation issues in major publications, including *The Wall Street Journal*, *Business Week*, *The New York Times*, *Fortune*, *The Washington Post*, *Bloomberg* and many others.

Over the past 20 years, I have provided expert testimony in more than 40 cases and have been qualified as an expert in the field of executive compensation 30+ times since founding my firm in 1992 (both on the employee and employer side). A list of cases in which I have rendered expert testimony since 2016 is attached as Exhibit B.

Compensation

I am being compensated at my normal hourly rate of \$715 per hour for preparing this report. My compensation is not contingent on the content of my opinions. I have been assisted in this engagement by my associate, Michael Perniciaro. Michael's normal hourly rate is \$225 per hour. All opinions in this report are my own.

Facts and Data Considered

In preparing this report, I considered certain documents provided to me, interviews with Mr. Dondero and former Highland or affiliate employees. The documents include information about Highland and its related entities, Mr. Dondero's compensation history, and financial statements over the period. Importantly, given the state of document production in this case, I did not receive all the documents typical for an assessment of compensation. The result of which could lead to a conservative bias in my assessment of market competitive compensation. I have evaluated publicly disclosed proxy statements of a select group of Highland peer firms, as well as information from news sources. The information is consistent with the data and outcomes across our client studies.

SUMMARY OF OPINIONS

Based on my experience as an executive compensation consultant and my review of the compensation and other documents, it is my opinion that:

- Reasonable compensation for Mr. Dondero's role is positioned well above the market median, toward the market high end. Based on analysis and market research, it is apparent that Mr. Dondero was the key leader of the firm and deeply involved in all its operations, with contributions well beyond the traditional CEO / Chief Investment Officer role at comparators. Competitive market high-end for Mr. Dondero's role is about \$6.0M per year while his actual compensation over the period was an average of about \$3.0M per year. Therefore, the aggregate shortfall in compensation provided to Mr. Dondero against reasonable compensation levels in the market is at least \$21M over the period I examined. Market compensation figures strictly represent Mr. Dondero's managerial responsibilities and does not include any premium as a Founder. Founders are often paid significantly more in the market.
- I understand from Mr. Dondero that the 2018 loans that are the subject of this suit were modified by an agreement in late 2018 or early 2019 under which the loans would be forgiven upon the sale at over cost of substantially all of any of three portfolio company assets held in the Highland platform, MGM, Cornerstone and/or Trussway. Based on interviews from prior employees, the use of forgivable loans was a known business practice at Highland and there was a clear expectation similar loans would be forgiven. Loans are often used both in private firms and more broadly in the market, both as a perk without forgiveness and also with forgiveness as deferred compensation.

- While I do not have sufficient data to know the capital in the firm at year end 2018,¹ the substantial amount of capital remaining in the firm at the time of bankruptcy (i.e., \cong \$399.6M) includes undistributed earnings to its Founders and primary shareholders, Mr. Dondero and Mr. Okada. For asset management firms, it is market practice to distribute most earnings annually to the firm's equity holders. The retention of the earnings in the business, further illustrate the shortfall in payments made to Mr. Dondero over the period.

¹I have been told that the Debtor has not produced much of what was requested by Mr. Dondero and that Mr. Dondero no longer has access to the Highland server. Therefore, I understand, what information he provided was from his own accountants, recollections, and/or from companies over which he still has control.

STATEMENT OF OPINIONS

Factual Background

From my review and analysis of available materials and research, I understand the consolidated Highland business (“Highland”) is a multi-strategy asset management firm focused on CLOs, hedge funds, and several private investments. Prior to the financial crisis, in 2008, Highland was very successful, reaching its peak revenue and assets under management levels. Looking at the post financial crisis period from 2013 to 2019, Highland continued to operate under the leadership of Mr. Dondero. During this period, several loans were made to Mr. Dondero. Part of my mandate was to assess market compensation levels during this period relative to firms with similar size and earnings. To do so, an assessment of Highland’s financial information is necessary. I did not receive all of the financial information for HCM that I would have liked to have had because, I was told, HCM refused to produce most of the documentation requested from it. However, I was able to review the actual financials of HCMFA and NPA, and to obtain information Mr. Dondero possessed and/or recollected. The revenues for HCMFA and NPA ranged from \$30.5M to \$65.9M over the period with assets under management of \$4.7B to \$7.5B. To complete my analysis, Mr. Dondero provided his best recollection of the size and structure of the consolidated three entities stating assets under management from 2013 to 2019 ranging from \$10.0B to \$20.0B, with a primary focus on CLOs and an average of about \$1.0B being in hedge funds. Based on the incomplete nature of my data review, there is a possibility that the market figures provided in this report could be understated based on my conservative approach, relying primarily on the documented data for HCMFA and NPA but only the recollection of Mr. Dondero for HCM, not the actual documentation, such as audited financial statements.

When examining Mr. Dondero's role at Highland relative to others in the market, it is apparent that his contributions and responsibilities exceeded the traditional duties of executive officers and lead investors who are paid significant amounts elsewhere. Mr. Dondero was the key man running daily business and operations, attracting clients, and overall investments. Given his outsized role, it would be reasonable to expect his compensation to be well above the market median. The sources utilized to ascertain specifics of his role and arrive at this conclusion include interviews with former Highland or Highland affiliate employees, as well as articles in the public domain and discussions with Mr. Dondero.

The total annual compensation for Mr. Dondero from 2013 - 2019 was \$3.0M on average and the aggregate compensation over the period was \$21.0M (source: W-2 filings). To assess the compensation in the market and determine the final market range, I utilized three methodologies including: (1) proxy analysis of CEOs at similarly sized, publicly traded asset management firms, (2) market research on Portfolio Manager compensation, (3) top-down analysis of typical percent of revenue allocated to CEO and/or top portfolio managers. Market compensation figures provided in this report strictly represent Mr. Dondero's managerial responsibilities and does not include any premium as a Founder.

To opine on the use of the loans as a form of compensation, I relied on market research, industry expertise, and interviews. My findings from this assessment are the use of forgivable loans was a normal business practice for Highland and there was a clear expectation they would be forgiven over time, based on varying performance criteria, depending on the employee.

An important additional consideration is the Founders, Mr. Dondero and Mr. Okada, did not receive the typical amount of distribution payments from their equity ownership. Based on the financials filed in connection with the bankruptcy, there was a significant amount of capital

in the business amounting to \$399.6M. This amount includes undistributed earnings to the original equity shareholders, primarily Mr. Dondero.

Market Assessment of Executive and Investor Compensation

During my career as a compensation expert, I have had significant experience assessing and designing annual compensation awards across the financial services industry, including comparable asset management firms. Accordingly, I am familiar with typical annual compensation levels for senior executives and senior portfolio managers at comparable asset management firms. I would expect pay levels for a key individual such as Mr. Dondero to be substantial, given his contributions, responsibilities, and the competitive market for investment management pay.

To assess reasonable compensation across the competitive market range, it is important to determine Mr. Dondero's responsibilities and contributions relative to others in the industry. It is my understanding that Mr. Dondero worked tremendously long hours, was involved in all aspects of the business including investment decisions, fundraising, business management / administration and the operation of portfolio companies. An article published in the *Dallas Morning News* states, "Mr. Dondero works 70 hours weeks... his days are filled with board and investor meetings, company strategy sessions and constant monitoring and adjusting of the firm's portfolios."² In my opinion, Mr. Dondero's role as CEO and head portfolio manager clearly exceeds the traditional duties of executive officers who are paid significant amounts elsewhere. Based on his significant responsibilities and key man status for the firm, it would be reasonable to expect annual compensation significantly above the market median.

² "High Intensity Pays Off For Highland," The Dallas Morning News, September 3, 2003, <https://www.pressreader.com/usa/the-dallas-morning-news/20060903/283218733648003>.

The appropriate positioning for Mr. Dondero is further accentuated by the assessment of “replacement cost”. If Mr. Dondero departed Highland in the period of 2013 to 2019, the cost of replacing him as CEO / head investor with a similar level of contribution across all functions would be multiples of his annual compensation. In assessing and providing market compensation for Mr. Dondero’s role, I considered how his skillsets and contributions are valued in the market. My assessment of market compensation considers the cost of replacing Mr. Dondero with an outside hire.

The final market range provided in Exhibit C reflects my industry experience and expertise as well as three methodologies for determining competitive compensation magnitudes. These methodologies include: (1) proxy analysis of CEOs at similarly sized, publicly traded asset management firms over the period, (2) market research on Portfolio Manager compensation, (3) top-down analysis of typical percent of revenue allocated to CEO and/or top Portfolio Managers. Several methodologies utilized to capture Mr. Dondero’s specific role as CEO and head portfolio manager. The market figures do not include any premium for being a Founder. In the market, Founders can be, and generally are, paid substantially more.

As shown below and in Exhibit E, the average annual compensation of public company asset management CEOs from 2013 to 2019 ranges from \$2.1M - \$4.1M. Importantly, in the market it is common for some senior investment professionals to earn more than the CEO or other corporate officers. Incorporating firm leadership functions into the investment role is a savings of sorts, as someone must still do this job.

Proxy Analysis CEO Total Compensation (Asset Management)								
	2013	2014	2015	2016	2017	2018	2019	Average
25th Percentile	\$1,515	\$1,680	\$2,405	\$1,845	\$2,370	\$2,310	\$2,220	\$2,049
Median	\$2,600	\$2,490	\$2,600	\$2,080	\$3,380	\$3,080	\$2,670	\$2,700
75th Percentile	\$3,210	\$2,805	\$3,130	\$3,815	\$3,945	\$3,285	\$3,435	\$3,375
90th Percentile	\$4,510	\$3,760	\$3,840	\$4,690	\$4,125	\$3,720	\$3,990	\$4,091

While we examined the disclosed compensation of a select group of public peers (Exhibit D), few of Highland's direct competitors are public and disclose the pay of their top investment professionals (see Exhibit F for some discussions about investment management compensation in the public domain). Instead, firms are either 1) private, or 2) if public, disclosed officers most often are not highly paid portfolio management professionals.

Specifics of individual portfolio management pay are closely guarded for competitive reasons. That said, there are some articles quoting portfolio manager pay in the public domain showing compensation for portfolio managers can be well above the competitive range for public asset management CEOs (see Exhibit F). For example, according to an article published by "efinancialcareers" top performing portfolio managers at the average Hedge Funds with greater than \$4.0B assets under management earned \$6.8M in total compensation.³ While Highland's structure differs from a pure hedge fund, the skills and role responsibilities are comparable to Mr. Dondero. Another example is the CEO of the Harvard Endowment, Mr. Narvekar, earned \$6.25M in 2019.⁴ The McLagan "Highland Capital CEO Compensation Analysis" (April 2020) produced by HCM, shows 2018 total compensation for the Head of Alternative Credit Strategy / CIO of \$4.1M at the 75th percentile and 2018 total compensation for CEO With/Without CIO Responsibilities making \$5.4M at the market median and \$9.6M at the market 75th percentile.

The final method for assessing compensation in the market is a top-down analysis of competitive percentages of revenue attributed to portfolio managers or their teams in the market. Based on competitive market research and industry knowledge, 10% to 12% of revenue would

³ Dan Butcher, "Here Are the Salaries and Bonuses at Hedge Funds in the U.S.," eFinancialCareers, May 5, 2018, <https://www.efinancialcareers.com/news/finance/the-salaries-and-bonuses-of-investment-professionals-at-large-hedge-fund-compensation>.

⁴ Janet Lorin, "Harvard Endowment Chief Narvekar \$6.25 Million for 2019," Bloomberg.com (Bloomberg, May 14, 2021), <https://www.bloomberg.com/news/articles/2021-05-14/harvard-paid-endowment-chief-narvekar-6-25-million-for-2019>.

be within the competitive market range for someone in Mr. Dondero's role. One public example of a dual CEO and CIO sharing directly in profitability is Mario Gabelli; he earns a fixed 10% of aggregate pre-tax profit every year per his employment agreement.⁵

The final competitive range below (Exhibit C) reflects the market competitive annual total compensation range. This competitive range was determined based on my interactions with asset management firms and over 30 years of industry experience and the insights gained from the three methodologies for determining competitive market compensation outlined above. Market compensation figures strictly represent Mr. Dondero's managerial responsibilities and does not include any premium as a Founder.

2013 - 2019 Total Annual Market Range			
Market Match	Market Median	Market 75th Percentile	Market 90th Percentile / High-End
CEO / Portfolio Manager	\$3,000	\$4,250	\$6,000

Based on the market research and the insights gained through my extensive experience advising on compensation in the industry, reasonable annual compensation for Mr. Dondero's extensive role as CEO and portfolio manager is positioned at the market high-end at **\$6.0M per year**. This figure takes into account firm size, profitability, asset class, and both the investment functions, as well as responsibilities for running the firm. In summary, given his outsized role, his compensation should be positioned toward the market high-end. If the comparison was directly to hedge fund portfolio managers, the figures would be far higher (i.e., often \$10M+

⁵ "Schedule 14A GAMCO INVESTORS, INC.," SEC.gov, April 29, 2020, <https://www.sec.gov/Archives/edgar/data/0001060349/000106034920000009/gblproxyfinal2020.htm>

annually). Additionally, market figures do not include any premium for being a Founder. In the market, Founders are often paid substantially more than the market figures shown.

Mr. Dondero's aggregate compensation during the period of 2013 to 2019 is well below the reasonable market compensation level. Mr. Dondero's aggregate actual compensation from 2013 - 2019 was \$21.0M (source: W-2 filings). Reasonable competitive compensation for Mr. Dondero based on our analysis of his role is \$6.0M per year or \$42.0M in aggregate over the period. The shortfall in actual compensation to Mr. Dondero versus reasonably expected competitive compensation levels over the period is about **\$21.0M** (Exhibit C). Market figures provided do not include any premium as a Founder, which further broadens the shortfall to market. An important additional consideration is the relative lack of typical equity distributions to Mr. Dondero for his historic ownership of the firm.

Use of Loans as Compensation

In my expert opinion, the use of loans from a company to its senior professionals continues to be a common practice for private businesses. At Highland, the use of loans was a common practice with the clear expectation among senior professionals that the loans would be forgiven over time based on performance, particularly of success in specified projects. I heard from former Highland or Highland affiliate employees that similar loans were used at Highland as deferred incentive compensation and intended to be forgiven over time or on the occurrence of particular achievements.

While, for public companies, Sarbanes Oxley Section 402 explicitly prohibits publicly traded companies from making loans to executive officers it is still a common practice at private

companies.⁶ The use of these loans at private companies is beneficial for retention by allowing the firm to provide annual or periodic or other forgiveness for a portion the loan and eventually forgiving the full amount. The amount of loan forgiveness is considered income to the professionals and is taxable when forgiven. This was the case at Highland as well. In a publicly available article for the *Dow Jones Private Equity Analyst – Global Compensation Study*, two Proskauer partners outline the tax regulations for similar loans to professionals.⁷

Market Practices on Equity Distributions

It is the standard practice in the market to distribute the majority of earnings to equity owners each year for asset management businesses. Based on the financials filed in connection with the bankruptcy, there was a significant amount of capital in the business equaling \$399.6M. This amount included undistributed earnings to the primary equity holders, Mr. Dondero and Mr. Okada. Highland did not distribute these earnings based on their philosophy of “delayed gratification”. This policy has been in place since the inception of the firm, including the peak years prior to the financial crisis. Very recently, the “delayed gratification” approach paid off in connection with Highland’s private direct investment in MGM which was announced to be acquired by Amazon with significant economics attached.⁸

⁶ Sarbanes-Oxley Act (2002).

⁷ Michael J Album and James E Gregory, “Human Capital Considerations For Maturing Private Equity Firms,” *Dow Jones Private Equity Analyst-Global Compensation Study*, 2012, pp. 84-96, <https://www.proskauer.com/insights/download-pdf/1930>.

⁸ Annie Palmer, “Amazon to Buy MGM Studios for \$8.45 Billion,” *CNBC* (CNBC, May 26, 2021), <https://www.cnbc.com/2021/05/26/amazon-to-buy-mgm-studios-for-8point45-billion.html>.

CONCLUSION

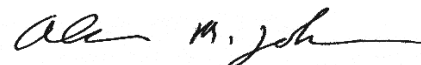
It is my opinion that Mr. Dondero's aggregate compensation from 2013 to 2019 is significantly below the reasonable competitive compensation level for his role relative to similarly situated firms. In aggregate, the total shortfall in Mr. Dondero's actual compensation versus reasonable competitive compensation is at least \$21.0M. This shortfall does not include any premium as a Founder, which could be considerable. Additionally, it is my opinion that the loans provided to Mr. Dondero should be considered potential deferred compensation as they were similar to loans given to other professionals at the firm. Lastly, the significant amount of capital in the business at the time of bankruptcy is at least partially attributable to Mr. Dondero as unrecognized payments as a prior equity holder, and indicates the rationale for having the potential for considerable deferred compensation.

* * *

I reserve the right to supplement this report and/or to supplement or modify my opinions in light of any additional facts or data that may come to my attention.

Dated: May 28, 2021

Respectfully submitted,



Alan Johnson
Johnson Associates, Inc.
19 West 44th Street, Suite 511
New York, NY 10036
Phone: (212) 221-740

Exhibit A: Work History and Education

Alan M. Johnson
Johnson Associates, Inc.
19 West 44th Street, Suite 511
New York, NY 10036
(212) 221-7400

Professional Experience

- Entire career as executive compensation consultant

Years	Firm	Title or Equivalent	Duties
1980 – 1983	Hewitt Associates	Consultant	Executive Compensation Consultant
1983 – 1986	Sibson & Company	Principal	Executive Compensation Consultant
1986 – 1989	Frederic W. Cook & Co.	Partner/Shareholder	Executive Compensation Consultant
1989 – 1990	Handy Associates	Managing Director	Executive Compensation Consultant
1990 – 1992	GKR	Managing Director	Executive Compensation Consultant
1992 – Present	Johnson Associates, Inc.	Managing Director	Executive Compensation Consultant

Education

1973 – 1975	U.S. Naval Academy
1975 – 1977	University of Florida, B.A. (History/Economics)
1977 – 1978	University of Virginia, Graduate Economics
1978 – 1980	University of Chicago, M.B.A. (Finance)

Consulting focus:

- Since about 1990 the bulk of my consulting efforts have involved advising major financial and professional service firms. I consult on the design and magnitudes of compensation programs for senior executives on a regular basis. I am quoted extensively in the press on compensation issues related to major financial service firms.

Exhibit B: Alan M. Johnson Prior Expert Testimony for Previous Five Years

LAW FIRM:	CASE:	COURT:	
Schulte Roth & Zabel LLP	Mark Rohman and Sean Cunningham v. Capstone Advisory Group, LLC.	Arbitration	(April 2016)
Gibson Dunn & Crutcher LLP	United States v. Greebel	Eastern District of NY	(December 2017)
Cohen Tauber Spievack & Wagner P.C.	Jeffrey Brown v. Neuberger Berman Group LLC, and NB Alternatives Advisers LLC	Arbitration	(January 2018)
Gibson Dunn & Crutcher LLP	Robert Emerson Mulholland v. UBS Financial Services Inc.	FINRA Dispute Resolution Arbitration	(December 2018)
Proskauer Rose LLP	Damian Dalla-Longa v. Magnetar Capital LLC	Arbitration	(September 2019)
Skadden, Arps, Slate, Meagher & Flom LLP	Isaly v. OrbiMed	Arbitration	(January 2020)
Pachulski Stang Ziehl & Jones LLP	RTI Holding Company vs. Debtors	Delaware Bankruptcy Court	(December 2020)

Exhibit C: Actual Compensation vs. Estimated Market Compensation Range

Mr. Dondero Actual Compensation (2013 - 2019)

Notes: Mr. Dondero's compensation reflects amounts disclosed in W-2 filings for 2013 to 2019

- Does not include equity distributions over the period; typically, not included in competitive assessments of compensation.

James Dondero Compensation									
Income	2013	2014	2015	2016	2017	2018	2019	Total	Average
Highland Capital Management W-2 Income	\$1,911,538	\$3,282,693	\$2,875,058	\$772,904	\$566,370	\$566,370	\$568,542	\$10,543,475	\$1,506,211
Nexpoint Residential Trust W-2 Income	--	--	--	--	--	\$893,262	--	\$893,262	--
NextPoint Advisors W-2 Income	--	--	--	\$1,628,736	\$3,118,250	\$2,870,278	\$1,953,455	\$9,570,718	\$2,392,679
Total W-2 Income (Source: W-2)	\$1,911,538	\$3,282,693	\$2,875,058	\$2,401,639	\$3,684,620	\$4,329,910	\$2,521,996	\$21,007,455	\$3,001,065

Estimated Market Compensation Range

Notes: Market annual total compensation range reflecting my direct interactions with asset management firms and over 30 years of industry experience

- We have factored in Mr. Dondero's out-sized role / contributions on both the investment management and firm-stewardship responsibilities where applicable.
- Greater than findings from public proxy analysis reflecting higher compensation to portfolio managers in the market / alternatives space.
- Represents finding from the 3 methodologies outlined for determining market compensation.
- Market compensation figures strictly represent Mr. Dondero's managerial responsibilities and does not include any premium as a Founder

Figures in 000s	2013 - 2019 Total Annual Market Range		
	Market Median	Market 75th Percentile	Market 90th Percentile / High-End
CEO / Portfolio Manager	\$3,000	\$4,250	\$6,000

Compensation Shortfall

Notes: In my opinion, reasonable competitive annual compensation for Mr. Dondero over the period is \$6.0M, positioning him toward the market high-end to reflect his out-sized role and contribution to the firm

Aggregate Reasonable Competitive Compensation	\$42,000,000
Less: Actual Total Compensation	\$21,007,455
Shortfall in Compensation	\$20,992,545

Exhibit D: Select Public Peer Comparators

Notes:

- Industry consolidation continues to shrink pool of publicly available compensation data for the asset management industry, even at much larger firms than Highland
- Group intended to represent a range of firms that are relevant but not perfectly similar
- Disclosure of Portfolio Manager positions limited as typically not included in publicly filed data (no compulsion to disclose as with executive officers)
- Highland data includes good faith estimate of consolidated entities assets under management during the period. Actual financials not assessed due to the non-disclosure of Highland Capital Management (“HCM”) information. Data for “HCMFA” and “NPA” reviewed.

	Assets Under Management (\$B)							Revenue (\$M)						
Peers	2019	2018	2017	2016	2015	2014	2013	2019	2018	2017	2016	2015	2014	2013
Asset Management														
Cohen & Steers	\$72	\$55	\$62	\$60	\$53	\$53	--	\$411	\$381	\$378	\$350	\$329	\$314	\$298
Pzena Investment	\$41	\$33	\$39	\$30	\$26	\$28	\$25	\$151	\$154	\$141	\$108	\$117	\$113	\$96
Silvercrest	\$25	\$19	\$21	\$19	\$18	\$18	\$16	\$102	\$99	\$91	\$80	\$75	\$69	\$60
Diamond Hill	\$23	\$19	\$22	\$19	\$17	\$16	\$12	\$137	\$146	\$145	\$136	\$124	\$105	\$81
Manning & Napier	\$19	\$20	\$25	\$32	\$35	\$48	\$51	\$136	\$161	\$202	\$249	\$328	\$405	\$376
Westwood Holdings	\$15	\$17	\$24	\$21	\$21	\$20	\$19	\$84	\$122	\$134	\$123	\$131	\$113	\$92
Hennessy Advisors	\$5	\$6	\$7	\$7	\$6	\$6	\$4	\$43	\$55	\$53	\$51	\$45	\$35	\$24
Main Street Capital	\$4	\$3	\$3	--	--	--	--	\$173	\$214	\$235	--	--	--	--
Consolidated Highland*	--	\$10.0	\$14.0	\$15.0	\$18.0	\$20.0	\$19.0	--	--	--	--	--	--	--
Highland Hedge Fund*		\$1.9	\$1.0	\$0.9	\$1.3	\$1.0	\$0.7	--	--	--	--	--	--	--
HCMFA & NP (only)	\$7.5	\$6.1	\$5.1	\$4.8	\$5.2	\$5.7	\$4.7	\$66	\$52	\$42	\$41	\$50	\$31	\$31

*Represents estimated for the consolidated three entities. Financial for Highland Capital Management ("HCM") not provided by the debtor

Exhibit E: Proxy Analysis Disclosed Public Peer CEO Compensation (2013 - 2019)

Notes:

- Reflects disclosed senior executive officer compensation in \$ thousands
- CEO not necessarily the highest paid employee at any given firm
- Senior investment professionals' pay often not disclosed and can be greater than CEO
- GAMCO not included; Mr. Gabelli receives 10% of aggregate pre-tax profit annually
- Indicates awards granted for performance each, not outstanding or fully vested compensation
- Where applicable, partial year salaries annualized. One-time awards annualized over appropriate vesting periods. Performance share values reflects target award values; does not reflect payouts from past cycles

Summary of Proxy Analysis

Proxy Analysis CEO Total Compensation (Asset Management)								
	2013	2014	2015	2016	2017	2018	2019	Average
25th Percentile	\$1,515	\$1,680	\$2,405	\$1,845	\$2,370	\$2,310	\$2,220	\$2,049
Median	\$2,600	\$2,490	\$2,600	\$2,080	\$3,380	\$3,080	\$2,670	\$2,700
75th Percentile	\$3,210	\$2,805	\$3,130	\$3,815	\$3,945	\$3,285	\$3,435	\$3,375
90th Percentile	\$4,510	\$3,760	\$3,840	\$4,690	\$4,125	\$3,720	\$3,990	\$4,091

Proxy Analysis by Year and Individual

Chief Executive Officer - 2019											
Company	Executive	Position	Base Salary	Cash Bonus	Total Cash	Stock Options	Restricted Shares	Perf Shares	Total Long Term	One-Time (Annualized)	Total Comp
Cohen & Steers	Steers, R.	CEO	\$750	\$835	\$1,585	\$0	\$2,915	\$0	\$2,915	\$0	\$4,500
Manning & Napier	Mayer, M.	CEO	\$500	\$2,250	\$2,750	\$145	\$755	\$0	\$900	\$0	\$3,650
Silvercrest	Hough, R.	Pres & CEO	\$700	\$1,000	\$1,700	\$800	\$475	\$0	\$1,275	\$240	\$3,215
Main Street Capital	Hyzak, D.	CEO	\$625	\$650	\$1,275	\$0	\$1,395	\$0	\$1,395	\$0	\$2,670
Pzena Investment	Pzena, R.	Chairman, CEO, & Co-CIO	\$365	\$685	\$1,055	\$0	\$1,425	\$0	\$1,425	\$0	\$2,480
Hennessy Advisors	Hennessy, N.	Chairman & CEO	\$350	\$1,455	\$1,805	\$0	\$155	\$0	\$155	\$0	\$1,960
Westwood Holdings	Casey, B.	President & CEO	\$650	\$0	\$650	\$0	\$0	\$0	\$0	\$0	\$650
25th Percentile			\$435	\$670	\$1,165	\$0	\$315	\$0	\$530	\$0	\$2,220
50th Percentile			\$625	\$835	\$1,585	\$0	\$755	\$0	\$1,275	\$0	\$2,670
75th Percentile			\$675	\$1,230	\$1,755	\$75	\$1,410	\$0	\$1,410	\$0	\$3,435
90th Percentile			\$720	\$1,775	\$2,185	\$405	\$2,020	\$0	\$2,020	\$95	\$3,990

Exhibit E: Proxy Analysis Disclosed Public Peer CEO Compensation (2013 - 2019)

Chief Executive Officer - 2018											
Company	Executive	Position	Base Salary	Cash Bonus	Total Cash	Stock Options	Restricted Shares	Perf Shares	Total Long Term	One-Time (Annualized)	Total Comp
Cohen & Steers	Steers, R.	CEO	\$750	\$650	\$1,400	\$0	\$2,355	\$0	\$2,355	\$0	\$3,755
Westwood Holdings	Casey, B.	President & CEO	\$650	\$1,065	\$1,715	\$0	\$0	\$1,995	\$1,995	\$0	\$3,710
Pzena Investment	Pzena, R.	Chairman, CEO, & CIO	\$365	\$995	\$1,360	\$0	\$1,925	\$0	\$1,925	\$0	\$3,285
Main Street Capital	Hyzak, D.	CEO	\$555	\$1,400	\$1,955	\$0	\$1,275	\$0	\$1,275	\$0	\$3,230
Silvercrest	Hough, R.	CEO	\$700	\$1,600	\$2,300	\$500	\$40	\$0	\$540	\$240	\$3,080
Hennessy Advisors	Hennessy, N.	CEO	\$350	\$2,420	\$2,770	\$0	\$220	\$0	\$220	\$0	\$2,990
Diamond Hill	Bingaman, C.	President & CEO	\$300	\$500	\$800	\$0	\$1,000	\$0	\$1,000	\$510	\$2,310
Manning & Napier	Coons, J.	Co-CEO & President	\$400	\$520	\$920	\$0	\$0	\$0	\$0	\$0	\$920
Manning & Napier	Goldberg, R.	Co-CEO & Director	\$750	\$0	\$750	\$0	\$155	\$0	\$155	\$0	\$905
25th Percentile			\$365	\$520	\$920	\$0	\$40	\$0	\$220	\$0	\$2,310
50th Percentile			\$555	\$995	\$1,400	\$0	\$220	\$0	\$1,000	\$0	\$3,080
75th Percentile			\$700	\$1,400	\$1,955	\$0	\$1,275	\$0	\$1,925	\$0	\$3,285
90th Percentile			\$750	\$1,765	\$2,395	\$100	\$2,010	\$400	\$2,065	\$295	\$3,720

Chief Executive Officer - 2017											
Company	Executive	Position	Base Salary	Cash Bonus	Total Cash	Stock Options	Restricted Shares	Perf Shares	Total Long Term	One-Time (Annualized)	Total Comp
Westwood Holdings	Casey, B.	CEO	\$650	\$1,540	\$2,190	\$0	\$0	\$1,995	\$1,995	\$0	\$4,185
Cohen & Steers	Steers, R.	CEO	\$750	\$735	\$1,485	\$0	\$2,615	\$0	\$2,615	\$0	\$4,100
Main Street Capital	Foster, V.	Chairman, CEO	\$610	\$1,500	\$2,110	\$0	\$1,780	\$0	\$1,780	\$0	\$3,890
Hennessy Advisors	Hennessy, N.	President & CEO	\$350	\$3,240	\$3,590	\$0	\$245	\$0	\$245	\$0	\$3,835
Pzena Investment	Pzena, R.	CEO, Co-CIO	\$365	\$2,560	\$2,925	\$0	\$0	\$0	\$0	\$0	\$2,925
Silvercrest	Hough, R.	CEO	\$700	\$1,500	\$2,200	\$0	\$40	\$0	\$40	\$240	\$2,480
Diamond Hill	Bingaman, C.	President & CEO	\$300	\$550	\$850	\$0	\$0	\$0	\$0	\$1,180	\$2,030
Manning & Napier	Stamey, C.	Co-CEO, Sales / Distribution	\$300	\$1,140	\$1,440	\$0	\$135	\$0	\$135	\$0	\$1,575
25th Percentile			\$340	\$1,040	\$1,475	\$0	\$0	\$0	\$30	\$0	\$2,370
50th Percentile			\$490	\$1,500	\$2,150	\$0	\$90	\$0	\$190	\$0	\$3,380
75th Percentile			\$665	\$1,795	\$2,380	\$0	\$630	\$0	\$1,835	\$60	\$3,945
90th Percentile			\$715	\$2,765	\$3,125	\$0	\$2,030	\$600	\$2,180	\$520	\$4,125

Chief Executive Officer - 2016											
Company	Executive	Position	Base Salary	Cash Bonus	Total Cash	Stock Options	Restricted Shares	Perf Shares	Total Long Term	One-Time (Annualized)	Total Comp
Westwood Holdings	Casey, B.	CEO	\$650	\$1,350	\$2,000	\$0	\$0	\$3,955	\$3,955	\$0	\$5,955
Cohen & Steers	Steers, R.	CEO	\$750	\$675	\$1,425	\$0	\$2,425	\$0	\$2,425	\$0	\$3,850
Hennessy Advisors	Hennessy, N.	President & CEO	\$350	\$3,075	\$3,425	\$0	\$350	\$0	\$350	\$0	\$3,775
Diamond Hill	Bingaman, C.	President & CEO	\$300	\$600	\$900	\$0	\$0	\$0	\$0	\$1,180	\$2,080
Pzena Investment	Pzena, R.	CEO, Co-CIO	\$365	\$1,600	\$1,965	\$0	\$0	\$0	\$0	\$0	\$1,965
Silvercrest	Hough, R.	CEO	\$700	\$725	\$1,425	\$0	\$55	\$0	\$55	\$240	\$1,720
Manning & Napier	Manning, W.	CEO	\$1,400	\$0	\$1,400	\$0	\$0	\$0	\$0	\$0	\$1,400
25th Percentile			\$360	\$640	\$1,415	\$0	\$0	\$0	\$0	\$0	\$1,845
50th Percentile			\$650	\$725	\$1,425	\$0	\$0	\$0	\$55	\$0	\$2,080
75th Percentile			\$725	\$1,475	\$1,985	\$0	\$205	\$0	\$1,390	\$120	\$3,815
90th Percentile			\$1,010	\$2,190	\$2,570	\$0	\$1,180	\$1,580	\$3,035	\$615	\$4,690

Exhibit E: Proxy Analysis Disclosed Public Peer CEO Compensation (2013 - 2019)

Chief Executive Officer - 2015											
Company	Executive	Position	Base Salary	Cash Bonus	Total Cash	Stock Options	Restricted Shares	Perf Shares	Total Long Term	One-Time (Annualized)	Total Comp
Westwood Holdings	Casey, B.	President, CEO	\$600	\$2,065	\$2,665	\$0	\$0	\$2,090	\$2,090	\$0	\$4,755
Hennessy Advisors	Hennessy, N.	President & CEO	\$350	\$2,515	\$2,865	\$0	\$370	\$0	\$370	\$0	\$3,230
Cohen & Steers	Steers, R.	CEO	\$750	\$485	\$1,235	\$0	\$1,790	\$0	\$1,790	\$0	\$3,025
Diamond Hill	Dillon, R.	CEO	\$360	\$640	\$1,000	\$0	\$0	\$1,600	\$1,600	\$0	\$2,600
Manning & Napier	Cunningham, P.	CEO	\$500	\$0	\$500	\$0	\$0	\$2,000	\$2,000	\$0	\$2,500
Pzena Investment	Pzena, R.	CEO, Co-CIO	\$380	\$605	\$980	\$0	\$0	\$1,330	\$1,330	\$0	\$2,310
Silvercrest	Hough, R.	CEO	\$700	\$725	\$1,425	\$0	\$240	\$0	\$240	\$0	\$1,665
25th Percentile			\$370	\$545	\$990	\$0	\$0	\$0	\$850	\$0	\$2,405
50th Percentile			\$500	\$640	\$1,235	\$0	\$0	\$1,330	\$1,600	\$0	\$2,600
75th Percentile			\$650	\$1,395	\$2,045	\$0	\$305	\$1,800	\$1,895	\$0	\$3,130
90th Percentile			\$720	\$2,245	\$2,745	\$0	\$940	\$2,035	\$2,035	\$0	\$3,840

Chief Executive Officer - 2014											
Company	Executive	Position	Base Salary	Cash Bonus	Total Cash	Stock Options	Restricted Shares	Perf Shares	Total Long Term	One-Time (Annualized)	Total Comp
Westwood Holdings	Casey, B.	President, CEO	\$600	\$1,995	\$2,595	\$0	\$0	\$2,060	\$2,060	\$0	\$4,650
Cohen & Steers	Steers, R.	CEO	\$750	\$460	\$1,210	\$0	\$1,660	\$0	\$1,660	\$0	\$2,870
Diamond Hill	Dillon, R.	CEO	\$360	\$640	\$1,000	\$0	\$0	\$1,600	\$1,600	\$0	\$2,600
Hennessy Advisors	Hennessy, N.	President & CEO	\$350	\$1,750	\$2,100	\$0	\$280	\$0	\$280	\$0	\$2,380
Silvercrest	Hough, R.	CEO	\$650	\$725	\$1,375	\$0	\$70	\$0	\$70	\$0	\$1,445
Manning & Napier	Cunningham, P.	CEO	\$500	\$495	\$995	\$0	\$0	\$0	\$0	\$0	\$995
25th Percentile			\$395	\$530	\$1,055	\$0	\$0	\$0	\$125	\$0	\$1,680
50th Percentile			\$550	\$685	\$1,295	\$0	\$35	\$0	\$940	\$0	\$2,490
75th Percentile			\$640	\$1,495	\$1,920	\$0	\$230	\$1,200	\$1,645	\$0	\$2,805
90th Percentile			\$700	\$1,875	\$2,350	\$0	\$970	\$1,830	\$1,860	\$0	\$3,760

Chief Executive Officer - 2013											
Company	Executive	Position	Base Salary	Cash Bonus	Total Cash	Stock Options	Restricted Shares	Perf Shares	Total Long Term	One-Time (Annualized)	Total Comp
Manning & Napier	Cunningham, P.	CEO	\$500	\$1,500	\$2,000	\$0	\$4,020	\$0	\$4,020	\$0	\$6,020
Westwood Holdings	Casey, B.	President, CEO	\$600	\$1,505	\$2,105	\$0	\$0	\$1,395	\$1,395	\$0	\$3,500
Cohen & Steers	Steers, R.	CEO	\$750	\$365	\$1,115	\$0	\$1,800	\$0	\$1,800	\$0	\$2,915
Diamond Hill	Dillon, R.	CEO	\$360	\$640	\$1,000	\$0	\$0	\$1,600	\$1,600	\$0	\$2,600
Hennessy Advisors	Hennessy, N.	President & CEO	\$350	\$1,170	\$1,520	\$0	\$90	\$0	\$90	\$0	\$1,610
Pzena Investment	Pzena, R.	CEO, Co-CIO	\$280	\$1,145	\$1,420	\$0	\$0	\$0	\$0	\$0	\$1,420
Silvercrest	Hough, R.	CEO	\$500	\$600	\$1,100	\$0	\$70	\$0	\$70	\$0	\$1,170
25th Percentile			\$355	\$620	\$1,110	\$0	\$0	\$0	\$80	\$0	\$1,515
50th Percentile			\$500	\$1,145	\$1,420	\$0	\$70	\$0	\$1,395	\$0	\$2,600
75th Percentile			\$550	\$1,335	\$1,760	\$0	\$945	\$700	\$1,700	\$0	\$3,210
90th Percentile			\$660	\$1,500	\$2,040	\$0	\$2,690	\$1,475	\$2,690	\$0	\$4,510

Exhibit F: Discussions of Investment Management Compensation in the Public Domain

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Documents Reviewed

Data Items Reviewed from Debtor

- Bates Label Range: D-JDNL-017439 to D-JDNL-017441

Data Items Reviewed:

- Bates Label Range: EXPERT 0000001 to EXPERT 0002316

Individual Documents - Starting Bates Label

- | | |
|-----------------------------|-----------------------------|
| • Expert 1 – EXPERT 0000001 | • Expert 1 – EXPERT 0001003 |
| • Expert 1 – EXPERT 0000003 | • Expert 1 – EXPERT 0001021 |
| • Expert 1 – EXPERT 0000004 | • Expert 1 – EXPERT 0001023 |
| • Expert 1 – EXPERT 0000024 | • Expert 1 – EXPERT 0001324 |
| • Expert 1 – EXPERT 0000026 | • Expert 1 – EXPERT 0001578 |
| • Expert 1 – EXPERT 0000028 | • Expert 1 – EXPERT 0001579 |
| • Expert 1 – EXPERT 0000030 | • Expert 1 – EXPERT 0001580 |
| • Expert 1 – EXPERT 0000365 | • Expert 1 – EXPERT 0001581 |
| • Expert 1 – EXPERT 0000367 | • Expert 1 – EXPERT 0001881 |
| • Expert 1 – EXPERT 0000372 | • Expert 1 – EXPERT 0001897 |
| • Expert 1 – EXPERT 0000383 | • Expert 1 – EXPERT 0001898 |
| • Expert 1 – EXPERT 0000384 | • Expert 1 – EXPERT 0001900 |
| • Expert 1 – EXPERT 0000385 | • Expert 1 – EXPERT 0001902 |
| • Expert 1 – EXPERT 0000387 | • Expert 1 – EXPERT 0001903 |
| • Expert 1 – EXPERT 0000389 | • Expert 1 – EXPERT 0001905 |
| • Expert 1 – EXPERT 0000679 | • Expert 1 – EXPERT 0001928 |
| • Expert 1 – EXPERT 0000703 | • Expert 1 – EXPERT 0001935 |
| • Expert 1 – EXPERT 0000928 | • Expert 1 – EXPERT 0001957 |
| • Expert 1 – EXPERT 0000929 | • Expert 1 – EXPERT 0001975 |
| • Expert 1 – EXPERT 0000931 | • Expert 1 – EXPERT 0001998 |
| • Expert 1 – EXPERT 0000933 | • Expert 1 – EXPERT 0002233 |
| • Expert 1 – EXPERT 0000935 | • Expert 1 – EXPERT 0002234 |
| • Expert 1 – EXPERT 0000937 | • Expert 1 – EXPERT 0002253 |
| • Expert 1 – EXPERT 0000940 | • Expert 1 – EXPERT 0002260 |
| • Expert 1 – EXPERT 0000942 | • Expert 1 – EXPERT 0002267 |
| • Expert 1 – EXPERT 0000944 | • Expert 1 – EXPERT 0002285 |
| • Expert 1 – EXPERT 0000968 | • Expert 1 – EXPERT 0002304 |
| • Expert 1 – EXPERT 0000970 | |
| • Expert 1 – EXPERT 0000972 | |
| • Expert 1 – EXPERT 0000974 | |
| • Expert 1 – EXPERT 0000979 | |

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Exhibit H

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Counsel for the Debtor and Debtor-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:	§	Case No. 19-34054
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.	§	Chapter 11
	§	
Debtor.	§	
<hr/>		
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
v.	§	Adversary No. 21-03003-sgj
	§	
JAMES D. DONDERO, NANCY DONDERO, AND	§	
THE DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	
<hr/>		
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff.	§	
	§	
v.	§	
	§	Adversary No.: 21-03005-sgj
	§	
NEXPOINT ADVISORS, L.P., JAMES	§	
DONDERO, NANCY DONDERO, AND THE	§	
DUGABOY INVESTMENT TRUST,	§	
	§	
Defendants.	§	
<hr/>		

Dondero”), The Dugaboy Investment Trust (“Dugaboy”), NexPoint Advisors, L.P. (“NexPoint”), Highland Capital Management Services, Inc. (“HCMS”), and NexPoint Real Estate Partners, LLC (“NREP”) (collectively, “Defendants”). Highland’s responses and objections to the Requests (the “Responses”) are made pursuant to Federal Rules of Civil Procedure (“FRCP”) 26, 33, and 34 as made applicable in bankruptcy cases pursuant to **Federal Rules of Bankruptcy Procedure 7026, 7033, and 7034.**

GENERAL OBJECTIONS

Unless otherwise specified, the following general objections and caveats are applicable to each and every Response and are incorporated into each Response as though set forth in full:

1. The Responses contained herein are based upon information presently known and ascertained by the Highland and Highland reserves the right to amend, supplement, or modify these Responses during depositions or otherwise.
2. Highland objects to the Requests to the extent they seek information or documents that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other privilege or immunity. The inadvertent disclosure or production of any document that is protected from discovery by any privilege or immunity shall not constitute a waiver of any such privilege or immunity. All references in these objections and responses to Highland’s agreement to produce documents shall be construed to mean non-privileged documents.
3. Highland objects to the Requests to the extent they request information that is not reasonably or readily available to it, in its possession, custody or control, or is more readily available to the Defendants from another source or for which the burden of obtaining such information is not substantially greater for the Defendants than it is for Highland.

4. Highland objects to the Requests to the extent they call for legal conclusions and/or analyses.

5. All specific responses to the Requests are provided without waiver of, and with express reservation of (a) all objections as to competency, relevancy, materiality, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this matter; (b) all privileges, including the attorney-client privilege and work product doctrine; (c) the right to object to the use of such responses, or the subject matter thereof, on any ground in any further proceeding in this action; and (d) the right to object on any ground at any time to a demand or request for further responses to these or any other discovery requests or other discovery proceedings.

6. Highland objects to the Requests to the extent they seek to expand on or conflict with Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure and/or the Local Rules of the Bankruptcy Court for the Northern District of Texas.

7. Highland's agreement to produce documents with respect to a specific Request shall not be construed as a representation that such documents actually exist or are within Plaintiff's possession, custody or control.

8. Notwithstanding Highland's production of certain documents that were lodged on the main docket or in one or more of the Adversary Proceedings, Highland has not reviewed all documents lodged therein and reserves the right to use, reply upon, or offer into evidence any such documents.

9. Unless indicated otherwise, Highland's search for responsive documents and communications covers the period December 1, 2018 to the present.

10. These General Objections and Responses shall be deemed to be incorporated by reference into the Specific Responses and Objections set forth below.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

REQUEST FOR PRODUCTION NO. 1:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that “Debtor believes that the Alleged Agreement is a fiction created after the commencement of this Adversary Proceeding for the purpose of avoiding or at least delaying paying the obligations due under the notes.”

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 1, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 2:

Produce all documents and communications supporting or related to your Avoidance and Recovery of Actual Fraudulent Transfer claims (Counts 3 and 4 of the Amended Complaint) made against James Dondero.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 2, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 3:

Produce all documents and communications supporting or related to your Declaratory Relief claims (Count 5 of the Amended Complaint) made against Dugaboy and Nancy Dondero.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 3, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 4:

Produce all documents and communications supporting or related to your Breach of Fiduciary Duty claims (Count 6 of the Amended Complaint) made against Dugaboy and Nancy Dondero.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 4, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 5:

Produce all documents and communications supporting or related to your Aiding and Abetting a Breach of Fiduciary Duty claims (Count 7 of the Amended Complaint) against James Dondero and Nancy Dondero.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 5, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 6:

Produce all documents and communications supporting or related to your Avoidance and Recovery of Actual Fraudulent Transfer claims (Counts 3 and 4 of the Amended Complaint) made against NPA.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 6, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 7:

Produce all documents and communications supporting or related to your Avoidance and Recovery of Actual Fraudulent Transfer claims (Counts 3 and 4 of the Amended Complaint) made against HCMS.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 7, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 8:

Produce all documents and communications supporting or related to your Avoidance and Recovery of Actual Fraudulent Transfer claims (Counts 3 and 4 of the Amended Complaint) made against HCRE.

RESPONSE:

Subject to the General Objections and this specific objection, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 8, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information. Highland reserves its right to supplement its Response to this Request in light of ongoing discovery.

REQUEST FOR PRODUCTION NO. 9:

Produce all documents and communications supporting or related to your Avoidance and Recovery of Actual Fraudulent Transfer claims (Counts 3 and 4 of the Amended Complaint) made against James Dondero.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 9, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 10:

Produce all documents and communications supporting or related to any damages that you are seeking pursuant to your Amended Complaints.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 10, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 11:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that, “At all relevant times, Mr. Dondero controlled the Debtor.”

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 11, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 12:

Produce all documents and communications related to the Alleged Agreement referenced in the Amended Complaints.

RESPONSE:

In response to Request for Production No. 12, Highland states that it is not aware of any documents responsive to this Request.

REQUEST FOR PRODUCTION NO. 13:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that “the Debtor's books and records do not reflect the Alleged Agreement.”

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 13, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 14:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that “Dugaboy was not authorized to enter into the Alleged Agreement on behalf of the Partnership or otherwise bind the Partnership (as “Partnership” is defined in the Limited Partnership Agreement.)”

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 14, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 15:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that “Mr. Dondero did not inform the Debtor's CFO or outside auditor's about the Alleged Agreement.”

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 15, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 16:

Produce all communications between the Debtor and Debtor's outside auditor.

RESPONSE:

Highland objects to Request for Production No. 16 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 16, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information concerning or relating to the Notes.

REQUEST FOR PRODUCTION NO. 17:

Produce all communications between the Debtor and Debtor's outside auditor related to any allegations in the Amended Complaints.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 17, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 18:

Produce all communications between Mr. Dondero and Debtor's CFO (as that term is used in the Amended Complaints) related to the Notes.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 18, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 19:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that "Nancy Dondero also lacked the authority to enter into the Alleged Agreement or to otherwise bind the Debtor."

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 19, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 20:

Produce all communications between Nancy Dondero and James Dondero.

RESPONSE:

Highland objects to Request for Production No. 20 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it asks for “all” communications between Nancy Dondero and James Dondero. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 20, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information concerning or relating to the allegations in the Amended Complaint or the Notes or the Amended Answer.

REQUEST FOR PRODUCTION NO. 21:

Produce all communications between Nancy Dondero and James Dondero related to the allegations in the Amended Complaints.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 21, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 22:

Produce all communications between Nancy Dondero and James Dondero related to James Dondero's compensation from the Debtor.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 22, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 23:

Produce all documents and communications supporting or related to the allegations in the Amended Complaints that each of the Defendants entered into the “Alleged Agreement with actual intent to hinder, delay, or defraud a present or future creditor.”

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 23, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 24:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that the “Alleged Agreement was not subject to negotiation.”

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 24, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 25:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that “the value of the consideration received by the Debtor for the transfers was not reasonably equivalent value.”

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 25, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 26:

Produce all documents and communications evidencing the value of the Notes.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 26.

REQUEST FOR PRODUCTION NO. 27:

Produce all documents and communications evidencing the value of the consideration received by the Debtor related to the Notes.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 27, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 28:

Produce all documents and communications supporting or related to the allegation in the Amended Complaints that James Dondero and Nancy Dondero “were aware that Dugaboy would have fiduciary duties to the Debtor if it acted to bind the Debtor.”

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 28, including using search terms and identifying custodians that the Debtor believes are most likely to yield responsive information.

REQUEST FOR PRODUCTION NO. 29:

Produce all documents and communications supporting any damages you are seeking related to the Amended Complaints.

RESPONSE:

Highland objects to Request for Production No. 29 on the ground that it is duplicative of Request for Production No. 10. Subject to the General Objections and this specific objection, Highland incorporates by reference its Response to Request for Production No. 10.

REQUEST FOR PRODUCTION NO. 30:

Produce all documents and communications relating to the solvency and financial condition of the Debtor.

RESPONSE:

Highland objects to Request for Production No. 30 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 30.

REQUEST FOR PRODUCTION NO. 31:

Produce all monthly balance sheets of the Debtor for the period from January 1, 2013 to the present.

RESPONSE:

Highland objects to Request for Production No. 31 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 31.

REQUEST FOR PRODUCTION NO. 32:

Produce all of the Debtor's internal monthly reporting packages for the period from January 1, 2013 to the present.

RESPONSE:

Highland objects to Request for Production No. 32 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 32.

REQUEST FOR PRODUCTION NO. 33:

Produce all of the Debtor's financial statements for the period from January 1, 2013 to the present.

RESPONSE:

Highland objects to Request for Production No. 33 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 33.

REQUEST FOR PRODUCTION NO. 34:

Produce all "loan summaries" of the Debtor for the period from January 1, 2013 to the present.

RESPONSE:

Highland objects to Request for Production No. 34 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 34.

REQUEST FOR PRODUCTION NO. 35:

Produce all of the Debtor's audited financial statements for the period from January 1, 2013 to the present.

RESPONSE:

Highland objects to Request for Production No. 35 on the ground that Highland has previously produced documents responsive to this Request and does not intend to produce all such documents again.

REQUEST FOR PRODUCTION NO. 36:

Produce all valuation reports, including all annual and/or periodic valuation reports, and all other documents reflecting the enterprise value and/or asset value of the following entities:

Trussway Holdings, LLC, Trussway Industries, LLC, MGM Holdings, and Cornerstone Healthcare for the period from January 1, 2013 to the present.

RESPONSE:

Highland objects to Request for Production No. 36 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 36.

REQUEST FOR PRODUCTION NO. 37:

Produce all valuation reports, including all annual and/or periodic valuation reports, and all other documents reflecting the enterprise value and/or asset value of all entities and assets owned, directly or indirectly, by the following entities and in which the Debtor has an interest: Highland Select Equity Fund, L.P., Highland Restoration Capital Partners, L.P., Highland CLO Funding, Ltd., Highland Multi Strategy Credit Fund, L.P., Highland Capital Management Korea Limited, and Cornerstone Healthcare.

RESPONSE:

Highland objects to Request for Production No. 37 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 38:

Produce all documents showing the financial performance of the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; and (v) any other entity owned, controlled, and/or managed by the Debtor.

RESPONSE:

Highland objects to Request for Production No. 38 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 39:

Produce all financial statements for the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; and (v) any other entity owned, controlled, and/or managed by the Debtor.

RESPONSE:

Highland objects to Request for Production No. 39 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 40:

Produce all monthly balance sheets for the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; and (v) any other entity owned, controlled, and/or managed by the Debtor.

RESPONSE:

Highland objects to Request for Production No. 40 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 41:

Produce all internal monthly reporting packages for the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; and (v) any other entity owned, controlled, and/or managed by the Debtor.

RESPONSE:

Highland objects to Request for Production No. 41 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 42:

Produce all documents reflecting the assets under management for the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; and (v) any other entity owned, controlled, and/or managed by the Debtor.

RESPONSE:

Highland objects to Request for Production No. 42 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 43:

Produce all documents reflecting the investment results and/or performance for the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; and (v) any other entity owned, controlled, and/or managed by the Debtor.

RESPONSE:

Highland objects to Request for Production No. 43 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 44:

Produce all documents reflecting marketing materials for the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; and (v) any other entity owned, controlled, and/or managed by the Debtor.

RESPONSE:

Highland objects to Request for Production No. 44 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 45:

Produce all documents related to any employment and/or shareholder or partnership agreement between Dondero, on the one hand, and any of the following entities on the other hand, for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; (v) any other entity owned, controlled, and/or managed by the Debtor; and (vi) Strand Advisors, Inc.

RESPONSE:

Highland objects to Request for Production No. 45 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 46:

Produce all documents related to any compensation (including, without limitation, base salary, annual bonus, long-term incentives, equity distributions, equity interests, perks, long-term awards, loans, forgiveness of debt, or otherwise) received by Dondero from any of the following entities for the period from January 1, 2010 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; (v) any other entity owned, controlled, and/or managed by the Debtor; and (vi) Strand Advisors, Inc.

RESPONSE:

Highland objects to Request for Production No. 46 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland will conduct a reasonable search for, and produce, documents responsive to this Request to the extent they relate to (i) the Debtor.

REQUEST FOR PRODUCTION NO. 47:

Produce all documents related to any compensation (including, without limitation, base salary, annual bonus, long-term incentives, equity distributions, equity interests, perks, long-term awards, loans, forgiveness of debt, or otherwise) received by any Related Entity for Dondero or on Dondero's behalf, from any of the following entities for the period from January 1, 2010 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries,

both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; (v) any other entity owned, controlled, and/or managed by the Debtor; and (vi) Strand Advisors, Inc.

RESPONSE:

Highland objects to Request for Production No. 47 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 48:

Produce all documents reflecting and/or relating to any organizational charts for any of the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; (v) any other entity owned, controlled, and/or managed by the Debtor; and (vi) Strand Advisors, Inc.

RESPONSE:

Highland objects to Request for Production No. 48 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1). Subject to the forgoing objection, Highland refers the Defendants to documents filed on this main docket in the above-referenced bankruptcy case.

REQUEST FOR PRODUCTION NO. 49:

Produce all documents reflecting and/or relating to Dondero's employment, investment, and/or managerial role(s) in any of the following entities for the period from January 1, 2013 to the present: (i) the Debtor; (ii) all of the Debtor's Managed Funds; (iii) all of the Debtor's subsidiaries, both direct and indirect majority-owned; (iv) all Affiliates of the Debtor; (v) any other entity owned, controlled, and/or managed by the Debtor; and (vi) Strand Advisors, Inc.

RESPONSE:

Highland objects to Request for Production No. 49 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 50:

Produce the Debtor's "books and records" referred to in paragraph 66(j) of the Amended Complaint filed against Defendant James Dondero.

RESPONSE:

Subject to the General Objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 50.

REQUEST FOR PRODUCTION NO. 51:

Produce all documents and communications evidencing any action taken by any limited partner of the Debtor to (i) take part in the control (within the meaning of the Delaware Act) of the Partnership's business; (ii) transact any business in the Partnership's name; and/or (iii) sign any documents or otherwise bind the Partnership in accordance with the LPA.

RESPONSE:

Highland objects to Request for Production No. 51 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 52:

Produce all documents and communications evidencing the value of the HCRE Notes.

RESPONSE:

Subject to the General Objections and these specific objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 52.

REQUEST FOR PRODUCTION NO. 53:

Produce all documents and communications evidencing the value of the HCMS Notes.

RESPONSE:

Subject to the General Objections and these specific objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 53.

REQUEST FOR PRODUCTION NO. 54:

Produce all documents and communications evidencing the value of the NPA Note.

RESPONSE:

Subject to the General Objections and these specific objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 54.

REQUEST FOR PRODUCTION NO. 55:

Produce all documents and communications evidencing the value of the Dondero Notes.

RESPONSE:

Subject to the General Objections and these specific objections, Highland will conduct a reasonable search for, and produce, documents responsive to Request for Production No. 55.

REQUEST FOR PRODUCTION NO. 56:

Produce the loan documentation for all loans made by Debtor to any then-current executive, consultant, or employee of Debtor or any related Person.

RESPONSE:

Highland objects to Request for Production No. 56 on the grounds that (a) it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense, *see* Fed. R. Civ. P. 26(b)(1), and (b) the phrases "loan documentation," "consultant," and "any related Person" are vague and ambiguous. Subject to the General Objections and these specific objections, Highland states that loans made by Debtor to any then-current executive, employee, or related party are identified and described in Highland's audited financial statements previously produced to James Dondero.

REQUEST FOR PRODUCTION NO. 57:

Produce all documents reflecting the payment status of all loans identified in response to the above (No. 56) Request for Production, and if forgiven, all documents reflecting the conditions for forgiveness.

RESPONSE:

Highland objects to Request for Production No. 57 on the grounds that (a) it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defenses, *see* Fed. R. Civ. P. 26(b)(1), and (b) the phrases "loan documentation," "consultant," and "any related Person" in Request for Production No. 56 are vague and ambiguous. Subject to the General Objections and these specific objections, Highland states that loans made by Debtor to any then-current executive, employee, or related party are identified and described in Highland's audited financial statements previously produced to James Dondero.

REQUEST FOR PRODUCTION NO. 58:

Produce all documents related to any audits of the Debtor from 2013 forward, including, but not limited to, any management letters, audit notes, and audit files.

RESPONSE:

Highland objects to Request for Production No. 58 on the grounds that it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defense. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland and PricewaterhouseCoopers previously produced documents responsive to Request for Production No. 58.

REQUEST FOR PRODUCTION NO. 59:

Produce all documents related to the sale or potential sale of any portfolio companies of the Debtor or interests in any portfolio companies owned by the Debtor, including, but not limited to, MGM, Trussway, and Cornerstone.

RESPONSE:

Highland objects to Request for Production No. 59 on the grounds that (a) it is overly broad, unduly burdensome, not proportional to the needs of the case, and not relevant to the parties' claims or defenses, *see* Fed. R. Civ. P. 26(b)(1), and (b) the phrase "potential sale" is vague and

ambiguous. Subject to the General Objections and these specific objections, Highland states that it has no documents responsive to Request for Production No. 59.

RESPONSES TO REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that Highland Capital Management, L.P. entered into the Fourth Amended and Restated Agreement of Limited Partnership of Highland Capital Management, L.P. (the "LPA"), on or about December 24, 2015.

RESPONSE:

Deny. Highland Capital Management, L.P. did not enter into, and is not a party to, the LPA.

REQUEST FOR ADMISSION NO. 2:

Admit that the LPA provided that the Majority Interest of Highland Capital Management, L.P. could approve compensation for the General Partner and its Affiliates (as those terms are defined in the LPA).

RESPONSE:

Deny. Request for Admission No. 2 inaccurately summarizes Section 3.10 of the LPA, which speaks for itself.

REQUEST FOR ADMISSION NO. 3:

Admit that James Dondero was an Affiliate of the General Partner in 2017 (as those terms are defined in the LPA).

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 4:

Admit that James Dondero was an Affiliate of the General Partner in 2018 (as those terms are defined in the LPA).

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 5:

Admit that James Dondero was an Affiliate of the General Partner in 2019 (as those terms are defined in the LPA).

RESPONSE:

Admit.

REQUEST FOR ADMISSION NO. 6:

Admit that James Dondero was an Affiliate of the General Partner in 2020 (as those terms are defined in the LPA).

RESPONSE:

Admit that James Dondero was an Affiliate of the General Partner from January 1 through January 9, 2020, and otherwise deny Request for Admission No. 6 on the basis of the corporate governance settlement that Mr. Dondero entered into and that was approved by the Court. See Docket Nos. 338 and 339.

REQUEST FOR ADMISSION NO. 7:

Admit that the Dugaboy Family Trust held a Majority Interest in Highland Capital Management, L.P. in 2017 (as those terms are defined in the LPA).

RESPONSE:

Deny. “Dugaboy Family Trust” is neither a defined term nor a party to the LPA.

REQUEST FOR ADMISSION NO. 8:

Admit that the Dugaboy Family Trust held a Majority Interest in Highland Capital Management, L.P. in 2018 (as those terms are defined in the LPA).

RESPONSE:

Deny. “Dugaboy Family Trust” is neither a defined term nor a party to the LPA.

REQUEST FOR ADMISSION NO. 9:

Admit that the Dugaboy Family Trust held a Majority Interest in Highland Capital Management, L.P. in 2019 (as those terms are defined in the LPA).

RESPONSE:

Deny. “Dugaboy Family Trust” is neither a defined term nor a party to the LPA.

REQUEST FOR ADMISSION NO. 10:

Admit that the Dugaboy Family Trust held a Majority Interest in Highland Capital Management, L.P. in 2020 (as those terms are defined in the LPA).

RESPONSE:

Deny. “Dugaboy Family Trust” is neither a defined term nor a party to the LPA.

REQUEST FOR ADMISSION NO. 11:

Admit that Nancy Dondero was the Dugaboy Family Trustee (as defined in the LPA) in 2017.

RESPONSE:

HCMLP objects to Request for Admission No. 11 on the ground that “Dugaboy Family Trust” is not defined in the LPA. HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matter asserted in Request for Admission No. 11. HCMLP acknowledges that the Defendants apparently contend that Nancy Dondero was the Dugaboy Family Trustee in 2017.

REQUEST FOR ADMISSION NO. 12:

Admit that Nancy Dondero was the Dugaboy Family Trustee (as defined in the LPA) in 2018.

RESPONSE:

HCMLP objects to Request for Admission No. 12 on the ground that “Dugaboy Family Trust” is not defined in the LPA. HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matter asserted in Request for Admission No. 12. HCMLP acknowledges that the Defendants apparently contend that Nancy Dondero was the Dugaboy Family Trustee in 2018.

REQUEST FOR ADMISSION NO. 13:

Admit that Nancy Dondero was the Dugaboy Family Trustee (as defined in the LPA) in 2019.

RESPONSE:

HCMLP objects to Request for Admission No. 13 on the ground that “Dugaboy Family Trust” is not defined in the LPA. HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matter asserted in Request for Admission No. 13. HCMLP acknowledges that the Defendants apparently contend that Nancy Dondero was the Dugaboy Family Trustee in 2019.

REQUEST FOR ADMISSION NO. 14:

Admit that Nancy Dondero was the Dugaboy Family Trustee (as defined in the LPA) in 2020.

RESPONSE:

HCMLP objects to Request for Admission No. 14 on the ground that “Dugaboy Family Trust” is not defined in the LPA. HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matter asserted in Request for Admission No. 14. HCMLP acknowledges that the Defendants apparently contend that Nancy Dondero was the Dugaboy Family Trustee in 2020.

REQUEST FOR ADMISSION NO. 15:

Admit that James Dondero was the primary beneficiary and the lifetime beneficiary of Dugaboy in 2017.

RESPONSE:

HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in Request for Admission No. 15. HCMLP acknowledges that Mr. Dondero contends that he is the primary beneficiary and the lifetime beneficiary of Dugaboy and that HCMLP has relied on such contentions in other aspects of the Bankruptcy Case.

REQUEST FOR ADMISSION NO. 16:

Admit that James Dondero was the primary beneficiary and the lifetime beneficiary of Dugaboy in 2018.

RESPONSE:

HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in Request for Admission No. 16. HCMLP acknowledges that Mr. Dondero contends that he is the primary beneficiary and the lifetime beneficiary of Dugaboy and that HCMLP has relied on such contentions in other aspects of the Bankruptcy Case.

REQUEST FOR ADMISSION NO. 17:

Admit that James Dondero was the primary beneficiary and the lifetime beneficiary of Dugaboy in 2019.

RESPONSE:

HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in Request for Admission No. 17. HCMLP acknowledges that Mr. Dondero contends that he is the primary beneficiary and the lifetime beneficiary of Dugaboy and that HCMLP has relied on such contentions in other aspects of the Bankruptcy Case.

REQUEST FOR ADMISSION NO. 18:

Admit that James Dondero was the primary beneficiary and the lifetime beneficiary of Dugaboy in 2020.

RESPONSE:

HCMLP denies knowledge or information sufficient to form a belief as to the truth of the matters asserted in Request for Admission No. 18. HCMLP acknowledges that Mr. Dondero contends that he is the primary beneficiary and the lifetime beneficiary of Dugaboy and that HCMLP has relied on such contentions in other aspects of the Bankruptcy Case.

REQUEST FOR ADMISSION NO. 19:

Admit that the Debtor's assets (including assets held through direct or indirect subsidiaries) exceeded its liabilities as of December 31, 2017.

RESPONSE:

Deny because the Debtor's assets (including assets held through direct or indirect subsidiaries) did not exceed its liabilities as of December 31, 2017.

REQUEST FOR ADMISSION NO. 20:

Admit that the Debtor's assets (including assets held through direct or indirect subsidiaries) exceeded its liabilities in January 2018.

RESPONSE:

Deny because the Debtor's assets (including assets held through direct or indirect subsidiaries) did not exceed its liabilities as of December 31, 2018.

REQUEST FOR ADMISSION NO. 21:

Admit that the Debtor's assets (including assets held through direct or indirect subsidiaries) exceeded its liabilities as of December 31, 2018.

RESPONSE:

Deny because the Debtor's assets (including assets held through direct or indirect subsidiaries) did not exceed its liabilities as of December 31, 2018.

REQUEST FOR ADMISSION NO. 22:

Admit that the Debtor's assets (including assets held through direct or indirect subsidiaries) exceeded its liabilities as of December 31, 2019.

RESPONSE:

Deny because the Debtor's assets (including assets held through direct or indirect subsidiaries) did not exceed its liabilities as of December 31, 2019.

REQUEST FOR ADMISSION NO. 23:

Admit that within Highland each of MGM, Cornerstone and Trussway were referred to as “Portfolio Companies.”

RESPONSE:

Highland objects to Request for Admission No. 24 on the ground that the phrase “within Highland” is vague and ambiguous.

OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify all damages that you are seeking against each of the Defendants, including, how those damages are calculated.

RESPONSE:

Against each maker of each Notes, HCMLP seeks damages in an amount equal to (a) all unpaid principal under each Note, (b) all accrued and unpaid interest under each Note, and (c) all actual expenses of collection, including court costs, and reasonable attorneys' fees in connection with each of the Adversary Proceedings. HCMLP incorporates by reference its prior written responses to discovery and refers the defendants to the Notes and the invoices of Pachulski Stang Ziehl & Jones, LLP other documents being produced in this adversary proceeding.

Against Nancy Dondero and Dugaboy, HCMLP seeks damages in an amount equal to (a) all unpaid principal under each Note, and (b) all accrued and unpaid interest under each Note.

Against James Dondero for aiding and abetting Nancy Dondero's and Dugaboy's breach of fiduciary duty, HCMLP seeks damages in an amount equal to (a) all unpaid principal under each Note, and (b) all accrued and unpaid interest under each Note.

Damages will continue to increase as interest continues to accrue and Highland continues to incur additional costs of collection.

INTERROGATORY NO. 2:

Provide the factual basis for your allegation in the Amended Complaints that Dugaboy owed a fiduciary duty to the Debtor.

RESPONSE:

Assuming that a court of competent jurisdiction finds that Dugaboy entered into an agreement on behalf of HCMLP pursuant to which HCMLP agreed to forgive collection on all or any of the Notes, then Dugaboy will have owed a fiduciary duty to the Debtor because, among

other things, (a) Dugaboy would have been acting on the Debtor's behalf, (b) Dugaboy would have bound the Debtor, and (c) Dugaboy would have been required to act reasonably under the circumstances.

INTERROGATORY NO. 3:

Provide the factual basis for your allegation in the Amended Complaints that Nancy Dondero owed a fiduciary duty to the Debtor.

RESPONSE:

HCMLP incorporates by reference its response to Interrogatory No. 3 and further notes that Ms. Dondero would have caused Dugaboy to enter into the Alleged Agreement.

INTERROGATORY NO. 4:

Identify all acts or omissions by each of the Defendants that breached any alleged fiduciary duties owed to the Debtor.

RESPONSE:

Assuming that a court of competent jurisdiction finds that Dugaboy entered into an agreement pursuant to which HCMLP agreed to forgive collection on the Notes, then Dugaboy and Nancy would have breached their fiduciary duties by acting unreasonably by (a) agreeing to forgive Notes with an aggregate principal amount in excess of \$70 million for \$1 in value, (b) agreeing to forgive Notes with an aggregate principal amount in excess of \$70 million at a time when they had no obligation to do so and received woefully inadequate consideration in return, and (c) otherwise acting unreasonably under the circumstances, including failing to perform reasonable diligence, failing to document and otherwise disclose the "agreement" to the Debtor's management and auditors, and by failing to disclose the "agreement" to the Bankruptcy Court at any time.

INTERROGATORY NO. 5:

Identify all acts or omissions by each of the Defendants that aided and abetted the breach of any alleged fiduciary duties owed to the Debtor.

RESPONSE:

Highland incorporates by reference its response to Interrogatory No. 5 and further states - that James Dondero would have further aided and abetted in the breach of fiduciary duties by using undue influence to persuade Ms. Dondero to enter into the Alleged Agreement on behalf of Dugaboy.

INTERROGATORY NO. 6:

Provide the factual basis for your allegation in the Amended Complaints that “At all relevant times, Mr. Dondero controlled the Debtor.”

RESPONSE:

The evidence that Mr. Dondero controlled the Debtor is extensive and HCMLP objects to Interrogatory No. 6 on the grounds that it is overly broad, unduly burdensome, and has been admitted to at various points in the Bankruptcy Case. Subject to the General Objections, the evidence that Mr. Dondero controlled the Debtor through at least January 9, 2020, includes his admissions, his control of Strand Advisors, Inc., his role as President of HCMLP, his authorization of the commencement of the Bankruptcy Case on behalf of HCMLP, and his agreement to the corporate governance settlement as embodied in Docket Nos. 338 and 339.

INTERROGATORY NO. 7:

Provide the factual basis for your allegations in the Amended Complaint that James Dondero controlled NPA.

RESPONSE:

The evidence that Mr. Dondero controlled NPA is extensive and HCMLP objects to Interrogatory No. 7 on the grounds that it is overly broad, unduly burdensome, and has been admitted to at various points in the Bankruptcy Case. Subject to the forgoing objection, the

evidence that Mr. Dondero controls NPA includes, among other things, his admissions, the admissions of DC Sauter and Jason Post at various points in this case, and prior judicial findings, holdings, rulings, and orders.

INTERROGATORY NO. 8:

Provide the factual basis for your allegations in the Amended Complaint that James Dondero controlled HCRE.

RESPONSE:

The evidence that Mr. Dondero controlled HCRE is extensive and HCMLP objects to Interrogatory No. 8 on the grounds that it is overly broad, unduly burdensome, and has been admitted to at various points in the Bankruptcy Case. Subject to the forgoing objection, the evidence that Mr. Dondero controls HCRE includes, among other things, his own admissions, his direct or indirect ownership interest in HCRE, and the positions he holds and has with respect to HCRE..

INTERROGATORY NO. 9:

Provide the factual basis for your allegations in the Amended Complaint that James Dondero controlled HCMS.

RESPONSE:

The evidence that Mr. Dondero controlled HCMS is extensive and HCMLP objects to Interrogatory No. 9 on the grounds that it is overly broad, unduly burdensome, and has been admitted to at various points in the Bankruptcy Case. Subject to the forgoing objection, the evidence that Mr. Dondero controls HCMS includes, among other things, his own admissions, his direct or indirect ownership interest in HCMS, and the positions he holds and has with respect to HCMS.

INTERROGATORY NO. 10:

Provide the factual basis for your allegation in the Amended Complaints that "the Alleged Agreement is a fiction."

RESPONSE:

Highland incorporates by reference and refers the Defendants to (a) the purported terms of the Alleged Agreement, (b) the purported purpose of the Alleged Agreement, (c) Mr. Dondero's prior sworn testimony in Adv. Pro. 21-03003; (d) documents identified on Docket Nos. 31 and 35, respectively, in Adv. Pro. 21-3004; (e) Mr. Dondero's Rule 26 disclosures in Adv. Pro. 21-03003; (f) the deposition testimony of PricewaterhouseCoopers and the exhibits marked during that deposition; (g) the lack of any documentation memorializing the terms of the Alleged Agreement, and (h) the lack of disclosure of the alleged "agreement" to the Bankruptcy Court .at any time prior to confirmation, including in connection with that objection to the Debtor's Plan.

INTERROGATORY NO. 11:

Provide the factual basis for your allegation in the Amended Complaints that "Mr. Dondero entered into the Alleged Agreement with actual intent to hinder, delay, or defraud a present or future creditor."

RESPONSE:

Highland contends that the evidence will prove that the Alleged Agreement is a fiction but if a court of competent jurisdiction finds otherwise, that the evidence will prove that Mr. Dondero entered into the Alleged Agreement when he knew that certain creditors, including the Redeemer Committee and Joshua Terry, were on the verge of obtaining substantial judgments against Highland and as he had at various times in the face of adverse litigation, sought to fraudulently transfer assets to limit (if not eliminate) judgment creditors' ability to collect.

INTERROGATORY NO. 12:

Identify the "value of the consideration received by the Debtor for the transfers," as that term is used in the Amended Complaint, and provide the basis for how that value was calculated.

RESPONSE:

Highland made the payments reflected in each Note in exchange for a promise by each maker that payment would be made on the terms set forth therein, including the payment of all principal and interest and all costs of collection, including attorneys' fees.

INTERROGATORY NO. 13:

Identify any portfolio companies that Debtor owns (wholly or partially).

RESPONSE:

Highland objects to Interrogatory No. 13 on the grounds that (a) "portfolio companies" is undefined, and (b) it is overly broad, unduly burdensome and is not relevant to any party's claim or defense nor is it proportional to the needs of this case.

INTERROGATORY NO. 14:

Identify any sale or potential sale of any portfolio companies (or a portion of such portfolio companies) owned (wholly or partially) by the Debtor, including, but not limited to, Trussway, MGM and Cornerstone, including the date of the sale, the buyer, and the amount paid.

RESPONSE:

Highland objects to Interrogatory No. 14 on the grounds that (a) "portfolio companies" is undefined, (b) the phrase "potential sale" is vague and ambiguous, (c) it is overly broad, unduly burdensome and is not relevant to any party's claim or defense nor is it proportional to the needs of this case, and (d) "potential sales" are not a term of the Alleged Agreement and otherwise constitute proprietary and confidential information. Subject to the forgoing objections, Highland has not sold Trussway, MGM or Cornerstone as of this time.

Dated: September 27, 2021

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